DOCUMENT RESUME

ED 202 106 EA 013 553

AUTHOR	Levin-Epstein, Michael; And Others
TITLE	Teachers and Labor Relations, 1979-1980. Special Report.
INSTITUTION	Bureau of National Affairs, Inc., Washington, D.C.
REPORT NO	BNA-GERR-RF-199
PUB DATE	8 Dec 80
NOTE	81p.; Government Employee Relations Report covering municipal, county, state and federal developments. For related documents, see ED 170 904 and ED 181 543.
AVAILABLE FROM	Bureau of National Affairs, 1231 25th St., NW, Washington, DC 20037 ($10.00; quantity discounts).
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	Arbitration; Collective Bargaining; Contracts; Court Litigation; Dismissal (Personnel); Economic Factors; *Education; Elementary Secondary Education; *Labor Relations; State Legislation; *Teachers; Teacher Strikes; *Unions

ABSTRACT

The annual special report on teachers and labor relations for the 1979-80 academic year discusses teacher organizing, collective bargaining and negotiations, contract settlements, strikes, economic issues, legal developments, and state legislative activities. A table of court cases relating to labor relations in education is also included. (Author/WD)

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SPECIAL REPORT
TEACHERS AND LABOR RELATIONS, 1979-1980

EA 013 553

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Extra copies of this special report are $10.00 each, with the following quantity discount available: 6-10 copies, 10%; 11-25 copies, 15%; 26-50 copies, 20%; 51-500 copies, 25%; 501-1,000 copies, 30%; and 1,001-2,000 copies, 35%.

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INTRODUCTION

In 1979-80, labor relations in education operated under the pervasive influence of presidential politics. One of the two major teacher unions—the National Education Association—came to the Democratic National Convention in New York City with 302 delegates and 162 alternatives—the largest bloc or causes at the convention.

NEA was the first major group to announce support for President Carter in the Democratic primaries, and most political pundits credit NEA with a decisive role in renominating President Carter and in influencing platform action at the convention.

The other major union—the American Federation of Teachers—backed Senator Edward Kennedy and to a lesser extent also played an influential role in determining the tenor of the debate at the convention. Despite Ronald Reagan's landslide victory, unionized teachers voted for Carter over Reagan by 45 to 42 percent.

In last year's Special Report, we said that what effect, if any, the creation of the Department of Education would have on labor relations would not be known for a year or so. Now, whether the Department will exist as we know it today is even in doubt.

While the federal role in education seems uncertain, the economy's effect on teachers and labor relations remained as penetrating as last year.

NEA reported a sharp rise in teacher complaints about pay, status and conditions. Teacher layoffs spread as cities sought ways to stretch thin budgets. In spite of steadily declining enrollments, the cost of operating the nation's largest school districts increased again.

As we enter the 1980's, education has become the primary activity of more than 61 million Americans. And according to an organization who should know—the National School Boards Association—collective bargaining is an "increasingly powerful force" in public education.

In this first report of the decade, we noticed an increase in litigation in almost every area of teachers and labor relations. We expect that trend to continue throughout the 1980's.

This year's Special Report discusses teacher organizing, collective bargaining and negotiations, contract settlements, strikes, economic issues, legal developments, and state legislative activities. In general, the report covers these labor relations developments for the 1979-80 academic year.

HIGHLIGHTS AND SUMMARY

Here are highlights of developments reported in this Special Report:

► For the first time, in head-to-head representation challenges between NEA and AFT, NEA won more "takeaways" than AFT, according to a top NEA organizer.

► NEA has substantially increased its organizing efforts and established a membership and organizing office in Washington, D.C., staffed with five full-time organizers.

► NEA is focusing more and more on "wall to wall" units where a local affiliate may represent not just teachers but other employees in a school system, such as food service workers, custodians, drivers, clerks, and even principals and administrators.

► Membership in the AFT increased last year by more than 50,000 and the union's 43 national representatives are receiving more organizing inquiries than they can handle, according to a top AFT organizer.

► For the 1980's, AFT's potential membership prospects appear healthy in the Sunbelt states where the union began canvassing several years ago.

► Merger of the NEA and AFT still remains a possibility, according to the AFT organizer.

► In states where fact finding is only advisory, school boards should publicize their intent not to be bound by the report, consultant Myron Lieberman advised school boards.

► Parents and students became increasingly involved in the collective bargaining process. A school newspaper that sponsored a public forum on teacher negotiations was credited with averting a threatened strike in New Jersey.

► Among the subjects judged by courts to be mandatory topics for bargaining were procedural safeguards concerning employee evaluations, insurance premiums, and length of the instructional day.

► Among the subjects defined as permissive collective bargaining items were the type of postgraduate hours qualifying a teacher for advancement and reduction in force procedures.

► Among the topics deemed by courts to be outside the scope of collective bargaining were individual religious leave days and reassignments of physical education teachers.

► School districts may not freeze automatic longevity and qualification increases on the ground of financial adversity during contract negotiations, the California PERB ruled.

► A demand for extra pay for added classes taught is nonarbitrable because the subject was not mentioned in the collective bargaining contract, the Minnesota Supreme Court ruled.

► A determination by an arbitrator that a teacher submitting a grievance had complied with procedural deadlines set forth in the contract should be deferred to, according to the Maine Supreme Court.

► A school board is responsible for the coercive and retaliatory actions of its superintendent and principal during negotiations, said the South Dakota Division of Labor and Management.

► Unfair labor practice charges brought against a school district for permitting a rival teacher union access to district mailboxes and other facilities unconnected with any certification challenge were dismissed by the New York State PERB.

► A union bringing charges of harassment by a school board against specifically named union members was not required to disclose its complete membership list in pre-trial discovery proceedings, the U.S. Court of Appeals for the Fifth Circuit held.

► There were 139 states in 11 states and Puerto Rico as of the end of October 1980, according to BNA's tabulation of available data. The largest strike affecting about 23,000 teachers affiliated with AFT in Philadelphia began August 31 and ended September 22 with a two-year agreement that provides no raise in 1980-81 and a 10 percent increase for 1981-82.

► Chicago's 27,000 teachers are the highest paid in the nation after their two-year contract ratified in October 1979. Starting teachers with a B.A. now earn $13,770 a year.

► San Francisco teachers ended a seven-week strike by approving a 15.5 percent pay and benefit package spread over the two-year contract.

► Of the states that recognized some right to strike for teachers, four states nontheless refuse permission where it would result in "a clear and present danger" to the public.

► Federal district courts in New York were inundated with cases involving the state's Taylor Act, which bans strikes by public employees and sets up a presumption of guilt for any employee absent during a period determined to constitute a strike.

► The issue of reduction in force took center stage in the labor relations area, as declining enrollments and budgetary constraints continued to be the order of the day.

► The voluntary wage guidelines issued by the Council on Wage and Price Stability had little or no influence on last year's teacher negotiations.

► A school board may pay higher salaries to teachers who sign no-strike agreements, the Illinois Supreme Court held.

► The decline in the stock market earlier in the fiscal year reduced the value of many pension funds—and public school teachers were caught in the tide. In Missouri, for example, two teacher pension funds lost $64,000,000.

► Teachers placed on a district's active substitute list are still eligible for unemployment benefits, according to the Minnesota Supreme Court.

► Even though the Supreme Court handed down a major ruling on agency fees and dues checkoff just three years ago, litigation continues unabated on this issue.

► The U.S. Court of Appeals for the Sixth Circuit ordered a lower federal court to reinstate with backpay a teacher whose contract was not renewed on the basis of recommendations by the principal and superintendent stemming from animosity over the teacher's union activities.

► State supreme courts were called upon to rule on numerous cases involving decisions of school boards to discharge teachers—and, in general, split over whether to uphold dismissals in particular cases. The sheer volume of cases decided on the appellate level indicates that teacher discharge matters will be one—if not the most—litigated issues of the 1980's.

► A school district failed to prove that its interest in the efficient administration of education outweighed a teacher's free speech and associational rights when it reprimanded the teachers for zealous advocacy as a union spokesperson.

► A teacher could not be suspended by the school board for cursing at a student during football practice because the board did not adopt a rule authorizing the suspension of teachers, the Illinois Supreme Court ruled.

► In the absence of an agreement between two schools, tenured teachers transferred from one school to another do not have to be treated as though they had been tenured by their new school district, according to the Supreme Court of New Jersey.

► The Chicago School Board, over the opposition of Mayor Jane Byrne and the Chicago Teachers Union, has passed a requirement that all school employees reside within city limits.

► The layoff and seniority provisions of a collective bargaining agreement which thwarted a court order that a school district achieve a 20 percent black teaching and administrative staff as part of a school desegregation plan were nullified by a federal district court in Michigan. The conflict between collective bargaining agreements and court orders, as reflected in this case, will become more pronounced or less visible, depending on the future of anti-busing legislation.

► Although declaring that a Virginia's school district's policy on maternity leave was unconstitutional, the Sixth Circuit Court of Appeals held that school board members were immune to being sued for money damages either personally or in their official capacity because they had acted in good faith.

► A school district cannot fire a school teacher simply because the teacher employed a controversial role-playing technique while teaching American history, the Fifth Circuit Court of Appeals held.

► There is no constitutional right for a student to be taught by a particular teacher, another court of appeals held.

► In the most important Supreme Court decision involving teachers and labor relations, the Court ruled that the Federal Government can deny funds to local school district on the basis of statstics showing a disproportionate number of black and other minority teachers being assigned to *de facto* segregated schools—even without proof that the school board intentionally discriminated in teacher assignments.

► Whether Title IX of the 1972 Education Amendments lets the Federal Government stop sex discrimination in employment at federally assisted schools is an issue that may finally be decided by the Supreme Court this term.

► The influence of Hispanics—the largest growing minority in the United States—could be seen in several areas of education last year, including the rules proposed by the new Department of Education for bilingual education and in litigation alleging national origin discrimination in employment.

► Nine states modified existing bargaining law affecting teachers last year.

► Minnesota adopted a law giving teachers the right to strike on 60 days notice in the absence of an agreement or arbitration award and creating a legislative commission on employee relations for oversignt of collective bargaining.

TEACHER ORGANIZING

NATIONAL EDUCATION ASSOCIATION

For the first time in head-to-head representation challenges between NEA and AFT, NEA won more "takeaways" than AFT, a top NEA organizer told BNA.

The details of NEA's organizing strategy, especially in direct confrontations with AFT, were described by the organizer in a lengthy interview for this Special Report.

NEA's two largest upsets were in Springfield, Massachusetts, where about 1,440 teachers switched from AFT to NEA representation in a vote September 10, 1979 and in Stamford, Connecticut where 1,300 teachers changed from AFT to NEA as their bargaining agent in balloting April 8, 1980.

Declaring that in "sheer numbers of takeovers, we won a first," the NEA organizer noted that the big challenges in Springfield, Stamford, and other locations in New England were possible because AFT originally had organized teachers in this region early in its formation, so it had established records of 10 years or more that NEA organizers could exploit and hold up for teachers to see that AFT had not delivered on any of its promises.

He noted that in recent years, teachers' frustrations in general in all parts of the country have been increasing, as their pay levels stayed low, as their jobs became less rewarding and rewarded, and as inflation accelerated this sense of helplessness.

In Springfield, he said, NEA was able to document to teachers that their salaries had fallen behind those of other Massachusetts teachers, in 10 years of AFT representation, simply by going to the school committee and getting its financial record which it then distributed to the teachers.

New England Focus

NEA had made the New England region one of its major focuses for challenging AFT last year, he said, partly because of the longevity of AFT organizing there, because of its history of bargaining and the availability of records to prove that history, and because NEA also had small numbers of members left in New England locals, and therefore, there was a good base from which to work.

According to NEA figures, for the 1979-80 school year, NEA had 1,679,834 dues paying members, while AFT had 568,359, with NEA's membership virtually limited to education and school related employees in all 50 states. AFT's teacher members tend to be concentrated in larger northeastern and western cities such as New York City, Chicago, Philadelphia, Detroit, Baltimore, Washington, D.C., Cleveland, and Boston. Last year AFT further expanded its recent efforts in organizing noneducation-related fields such as health care, sanitation, housing, and law enforcement.

Philadelphia would be difficult for NEA to challenge, the organizer explained, because very few teachers there belong to a minority NEA organization. In addition, the AFT local there, while having an internal leadership change recently, has been loyal to AFT President Albert Shanker, who also is president of the New York City local.

In Boston, however, AFT organized teachers a decade ago and 80 percent of the teachers belonged to AFT. He noted, however, that AFT's membership there has fallen to less than 50 percent, thus paving the way for a possible challenge when the three-year agreement the Boston Teachers Union recently signed with the school committee is set to expire *(GERR 879:27)*.

On the one hand, he said, because of Boston's financial problems, funding for the contract is being challenged in court and could have the effect of further souring more Boston teachers on the quality of BTU's representation. On the other hand, if the contract holds up in court, this gives NEA until the 1982-83 school year to build a strong affiliate in Boston. Already a monthly NEA newsletter is being beamed to Boston teachers, he said.

Other areas of the country that NEA targeted for organizing drives last year and will continue to do so in the future are the midwest—especially Michigan—where he said NEA did very well last year in gaining new teacher units. Aside from AFT's stronghold in Detroit, the Michigan Education Association represents nearly all of Michigan's other teachers, including those in Grand Rapids, Flint, Warren, and Madison.

The NEA organizer said that NEA has organizers working in Detroit to establish a strong minority organization there, but much in that school system will depend on the metamorphosis of the Detroit Federation of Teachers now that its president of 20 years, Mary Ellen Riordan, has announced her retirement in February 1981 *(GERR 884:26)*.

Internal union elections taking place this December could significantly change the direction and character of that union, he suggested, and with the departure of Riordan, a strong Shanker ally, NEA may have a good chance to mount a challenge there in coming years.

AFT Takeaways Explained

Not all the teacher representation elections in which both NEA and AFT participated resulted in NEA takeover of previously AFT units. In Albuquerque, 4,100 teachers whom NEA had spent considerable time, money, and effort organizing in the past, switched to AFT as their official bargaining agent in balloting October 11, 1979. But he noted Albuquerque has fallen in teacher salaries from thirty-second to fiftieth and indicated future NEA challenges may be in the offing.

Furthermore, AFT affiliates held their own in beating back NEA challenges to represent Oklahoma City's 2,500 teachers and Newark's 3,200 teachers in votes on October 30, and December 17, 1979, respectively. In the latter case NEA's affiliate succeeded in getting the 30 percent of signatures of teachers in the unit to trigger an election, but not over 50 percent of the teachers in that northern New Jersey city, which has strong geographical and labor ties to AFT's center of strength in New York. In all three of these elections, the balloting was not very close, and NEA organizers tend to blame weak local leadership and/or misunderstanding of local issues on AFT takeovers of NEA affiliates.

While NEA last year successfully withstood AFT challenges in Wichita, Kansas (2,900 teachers), Scottsdale, Arizona (1,575 teachers), and several large California school districts, including Torrance (1,285 teachers) and Pasadena (1,265 teachers), the NEA organizer conceded that as far as NEA organizing last year was concerned "California was not a good year for us."

NEA's state affiliate, the California Teachers Association, continues to represent by far the majority of California teachers, but he explained that AFT has targeted that state to try to launch raids on NEA's affiliates, so that nearly half of NEA's losses last year were in California.

Much of the problem stems from the state of the California school districts themselves, he explained. After California voters enacted Proposition 13 in June 1978 cutting back property taxes *(GERR 673:16)*, schools lacked adequate funding, cutbacks in teachers and services occurred, and AFT capitalized on teachers' discontent by blaming and challenging incumbent CTA affiliates.

He said NEA expects more AFT challenges in California but added that CTA has been reinforced with more staff and money to defend its affiliates. Another mammoth organizational fight now taking shape in California involves representation of the approximately 20,000 faculty of the state college and university system.

While the state Public Employment Relations Board still must make a major decision on inclusion or exclusion of part-time employees, organizing to represent these faculty members is getting into high gear between AFT and the California Faculty Association. He noted that CFA is a coalition composed of CTA, the American Association of University Professors, and the California State Employees Association.

As in other large urban school systems where AFT has held sway for many years, AFT's major stronghold in California is San Francisco, but the NEA organizer said that along with a reorganization and revitalization of CTA, NEA also has an active minority organization developing in San Francisco.

Another state in which NEA organizing did not go well last year was Minnesota, the NEA organizer pointed out, noting that NEA lost nine locals to AFT there. In addition, AFT represents teachers in Minneapolis and St. Paul.

Minnesota is an example of a state with an excellent NEA state affiliate, he said, so these losses are somewhat puzzling. The strong state association has been instrumental and effective in winning favorable public sector bargaining legislation and amendments, including the limited right to strike for teachers.

He said that winning this law in particular involved convincing the state AFL-CIO organization that the unlimited right to strike was far less favorable for teachers than the progressive steps of mediation, cooling off, and so on which then produce strike dates usually coinciding with the beginning of September and the start of most schools. He added that NEA expects another round of AFT challenges in Minnesota next year.

The Eyes of Texas

Looking at the states of Texas and Florida as bellwethers for what has been happening organizationally between NEA and AFT, the NEA organizer noted that the only AFT organizing activity NEA detects currently in the south is occurring in Dallas, Texas, where AFT is trying to affiliate a small community college independent association. "AFT was making some noise in Atlanta, but that seems to have died down, and besides we're beefing up our local there," he observed.

In early 1979, AFT's affiliate in Corpus Christi persuaded the school board there to agree to a representation election and to recognize the winner as the teacher's exclusive representative. While the NEA organizer conceded that AFT won that contest, he took the opportunity to note that this illustrates one of the basic philosophical differences between NEA and AFT.

Under that state's constitution, public sector bargaining is prohibited law, he explained, and, therefore, parties do not bargain as such but enter into a memorandum of understanding (MOU). Where NEA affiliates have signed such MOUs in Texas, he said, AFT has gone to court—joined with the conservative educators' group called the National Association of Professional Educators (NAPE)—to have these MOUs rescinded.

"Since NEA believes in the principle of collective bargaining, in Corpus Christi we took the position that an AFT bargaining unit is better than no bargaining unit at all, so we didn't challenge their status in court," even though AFT has challenged NEA's majority status, memoranda and contracts, and agency shop provisions in Texas and numerous other places in the country, he said. Depending on when the expiration or "window period" of AFT's contract in Corpus Christi occurs, the NEA organizer said "we will be back; we have a strong local there."

NAPE is more of a problem in Texas than AFT is, he continued. Besides Corpus Christi, AFT has small minority locals in San Antonio, Dallas, and Houston. Back in the early 1970s, NEA made a major effort toward unification, whereby any local association member automatically belonged to the state and national association.

Texas, however, was one of the last states to unify, with the result that for many years, teachers there had the choice of joining the local, the Texas State Teachers Association, the Texas Classroom Teachers Association, and/or NEA. When TSTA finally unified, TCTA went independent and thus represents a threat to draw off NEA members, he said.

NEA also has been hurt by the issue of administrators' membership in Texas, he said, for when NEA changed its constitution to restrict such employees from full NEA membership, the number of NEA's Texas members fell from 140,000 to about 100,000, with NAPE capitalizing on these disaffected administrative educators.

NAPE surfaces elsewhere in the south from time to time, according to the NEA organizer, and he conceded it may be a problem in Mississippi where one predominantly black and one predominantly white NEA affiliate finally merged just a few years ago.

However, he scored both AFT's and NAPE's hypocrisy for opposing one another one minute for philosophical differences about labor relations, and for collaborating where it suits their pragmatic purposes. In Bloomer, Wisconsin, where NAPE represents teachers, it bargained an agency shop for its unit, for example, despite being on record as opposing even collective bargaining as one of its major founding principles.

Several years ago, he continued, AFT and NAPE representatives collaborated to defeat a bargaining bill for teachers in Alabama. An organization that strongly supports NAPE—the Concerned Educators Against Union Control of Government, an ally of the National Right to Work Committee—and the AFT also made strange bedfellows, he said, since both organizations opposed the newly established U.S. Department of Education which President Carter promised NEA and which was established in May.

New York and Florida Hold Key

In many respects, he noted, what has occurred organizationally in New York and Florida goes a long way toward explaining NEA's organizing strategy both in those states and nationwide. New York and Florida are the only two states ever to experiment with a merged NEA-AFT organization, Florida in the early 1970s and New York in the mid-1970s.

However, inevitable power structures created rifts so that both mergers ultimately broke apart with the New York State United Teachers remaining the dominant AFT organization there and NEA supporting the New York Educators' Association. According to the NEA organizer, NEA is "holding its own" in New York with about 25 - 26,000 members. He noted that AFT successfully challenged NEA for bargaining rights of two small units, 211 Saugerties teachers and 177 New York City attendance teachers, but that NEA picked up new units at Hudson Valley Community College and Fulmont-Montgomery Community College.

When NYSUT disaffiliated from the National Education Association in 1976, he explained, all the rest of the other merged teacher units in the state except one, Amsterdam, decided to stay affiliated with NYSUT rather than going with NEA, after putting the NEA-or-AFT question to a vote, he said. This tends to reflect the trend that whatever the state leaders or the state organization decide, so too will the local affiliates decide.

In Florida, NEA's former state affiliate, the Florida Education Association, merged with AFT's state affiliate to become FEA/United, with its strongest membership centered in Dade County. However, when the organization joined AFT and the AFL-CIO, NEA disaffiliated it and established the Florida Teaching Professions as its state affiliate.

At that point in time, however, he explained, county teacher units represented by NEA or AFT affiliates were about evenly split, so even though there were some elections last year, teacher membership in that state remains about evenly divided with about 30,000 members each. Both organizations try to keep strong minority affiliates alive in counties where their opposite number is the exclusive bargaining agent, and, therefore, recent years have seen constant "swiping" at each other in hopes of turning over units.

According to the NEA organizer, FEAU membership in Dade County has, like Boston, fallen below 50 percent, so "NEA has a good local there and can challenge when the contract expires." He explained that the AFT affiliate negotiated a contract for Dade teachers five years ago and rather than renegotiating it, keeps extending it from year to year.

He said that NEA will have to await a decision by the Florida Public Employees Relations Commission on when the window period of the Dade contract occurs in order to challenge its AFT counterpart to an election, but he said some 800 Dade teachers dropped their FEAU memberships last year and formed a dissident group.

While NEA challenged AFT for about 100 Gilchrist County teachers and lost earlier this year and AFT took away about 100 Nassau County teacher aides last year, he said NEA has active organizations growing in Brevard and Duval Counties where challenges can be expected in the future.

NEA's New Organizing Office

Clearly, NEA is stepping up its time, money, and manpower going into organizing activities, he noted, and a major development was the establishment last June of a membership and organizing office at NEA headquarters in Washington, D.C., staffed with five full-time organizers. Formerly organizing had been overseen by NEA's eight regional offices, and the staff of five brings together experts all of whom have considerable field experience.

NEA's newly expanded organizing staff will be concentrating on the following four areas for prospective members, he said:

- ► higher education;
- ► AFT takeback teacher units;
- ► other private, parochial educational employees; and
- ► other non teaching school personnel.

The organizer stressed that NEA's mission is and will remain pursuing quality education and that NEA accepts the policies of its state affiliates. He charged that AFT represents so many kinds of employees other than teachers that it cannot speak for teachers or be concerned with the quality of education. He also charged that AFT espouses the policy of a separate union for paraprofessionals and administrators but often violates its own policy such as in Rochester, New York, where administrators and teachers occupy the same bargaining unit.

He said that NEA presently is focusing much attention on the whole matter of "wall-to-wall" units whereby a local affiliate may represent not just teachers and other certificated employees of a school system, but also its food service workers, custodial and maintenance employees, bus drivers, clerks and secretaries, and principals and administrators.

In late 1980, he said, NEA plans an organizing conference attended by two representatives of all 50 state affiliates to find out how states are handling the issue and explore the status and future of such wall-to-wall units. On the whole, midwest and eastern states tend to have wall-to-wall units, but they are not prevalent in southern, western, or mountain states. The big exception is Florida, he said, where some units are wall-to-wall and some are not.

The purpose of the meeting is to obtain some hard figures on these types of units, identify who has them or who wants to have them, and find out why those who want them don't have them and why those who don't want them don't have them.

Anatomy of a Campaign

In describing the nuts and bolts of running an organizing drive in a particular school district where NEA is trying to convince teachers not to vote for AFT and to switch their bargaining agent from an incumbent AFT affiliate to an NEA affiliate, the NEA organizer said that ideally an organizing drive should run in length from about six to eight weeks.

A campaign a few years ago at the State University of New York to become the faculty's exclusive bargaining agent dragged on four months which he said was far too long so that at the end many teachers were disgruntled with both organizations.

But in a normal school district election, he said he prefers to get one piece of organizing literature to every teacher every day of the campaign. "We know that the other side is going to be sending teachers their message every day, and we can't afford to skip a day when that is the day a particular teacher may take the time to read the literature and make a choice," he explained.

For these daily handouts, he said he likes to use a one-page, easy-to-read message focusing on comparisons between the NEA and AFT, such as salary, benefits, representation services, and state and national leadership and organizational structure. He also said he prefers to use as a distributing system, teachers' mailboxes at work, if the school system permits this, because this means teachers will read the literature at school and have a chance to discuss it there among themselves.

He said that longer, more complex and informative "think pieces" such as an "open letter" to teachers about the AFL-CIO are sent to teachers' homes where they will have more time to sit down, read, and ruminate about it. "A Friday morning arrival in the mail is perfect. The teacher has all weekend to get around to it," he declared.

"We hammer away at comparisons between NEA and AFT mainly because NEA has so much more going for it and so much to offer teachers; AFT has so much about it to criticize and so much it does badly, that we'll never run out of good campaign material," he concluded.

Following is NEA's list of teacher representation elections held in the 1979-80 school year and its fact sheet comparing NEA and AFT, excerpts from its handbook on questions and answers about AFT.

TEACHER REPRESENTATION ELECTIONS

AS REPORTED TO THE ORGANIZING/MEMBERSHIP OFFICE OF THE NATIONAL EDUCATION ASSOCIATION

JULY 1979—JUNE 1980

TOTALS

NEA vs AFT

	NEA WINS	AFT WINS
K-12	38	37
HIGHER EDUCATION	3	2
TOTAL	41 (includes 7 takeovers)	39 (includes 17 takeovers)
[*Total since 1962-63.*	*901 (68%)*	*421 (32%)*]

NEA vs AAUP

	NEA WINS	AAUP WINS
	0	1
TOTAL	0	1

NEA vs 'OTHERS'

	NEA WINS	'OTHER' WINS
K-12	6	2 (Ind.)
HIGHER EDUCATION	7	2 (no Rep)
TOTAL	13	4

NOTE: In addition to representation elections, NEA affiliates won 6 internal affiliation contests, AFT affiliates, 4.

CODE: #1—No previous elections
#2—NEA challenged incumbent
#3—NEA was challenged
*—NEA win

STATE	CODE	DATE	DISTRICT	ELIGIBLE	ASSOCIATION	UNION	NO REP	OTHER
ARIZONA	#1	10/30/79	*Flowing Wells	205	117	64	0	
	#3	5/14/80	*Scottsdale	1,572	593	522	38	
CALIFORNIA	#3	9/18/80	*Selma Unified	198	115	48	3	
	#3	10/2/79	*Chaffey	683	320	153	6	
	#1	10/18/79	*N. Orange Co. CC	522	219		193	
	#1	10/29/79	Oakland Adult Teachers	108	33	46	9	
	#3	11/6/79	*Weaver	37	20	17		
	#3	11/14/79	*Santa Barbara	905	546	237	3	
	#1	11/21/79	*Palo Alto Adult	85	57		8	
	#3	1/29/80	*N. Monterey Co.	259	140	89		
	#1	2/5/80	Imperial CC	103	45		50	
	#3	3/14/80	Santa Cruz	480	155	260	4	
	#1	4/16/80	*El Monte HS Adult	26	21		3	

	#1	4/28/80	*Orange (Counselors)	44	31		4	
	#3	5/6/80	Jefferson Elementary	346	163	165	1	
	#3	5/7/80	*San Bruno Elementary	139	86	49	1	
	#3	5/1/80	Antelope Valley	322	145	157	16	
	#3	5/13/80	ABC Unified	1,160	432	491	7	
	#3	5/14/80	*Escondido Secondary	302	146	118	2	
	#3	5/1/80	*Torrance	1,284	640	386	4	
	#3	5/20/80	*South Bay HS	265	130	112	2	
	#1	5/28/80	*San Pasqual	45	24		3	PEG 18
	#3	5/28/80	Tamalpais HS	360	138	159	3	
	#3	5/27-29/80	*San Diego College	1,531	282	244	34	
	#3	5/29/80	*Newark	386	203	149	1	
	#3	5/29/80	*Bassett	261	128	121	2	
	#3	6/4/80	*National City	251	134	94	1	
	#3	6/4/80	Salinas	380	138	217	3	
	#3	6/5/80	*Palmdale Elementary	162	109	39	4	
	#3	6/10/80	*Almeda	519	244	195		
	#3	6/11/80	*Pasadena	1,265	535	426	12	
CONNECTICUT	#2	4/8/80	*Stamford	1,288	523	473	24	
	#2	4/14/80	*Clinton	181	98	67	3	
	#3	4/29/80	*No. Bramford	188	95	87	1	
	#3	6/2/80	Wethersfield	300	127	148	2	
	#3	6/5/80	*Torrington	343	195	118	3	
	#2	6/10/80	Meridan	601	274	284	2	
DELAWARE	#1	4/1-2/80	*New Castle (bus drivers)	400	146	117	59	
	#3	5/30/80	Delaware Tech. CC	190	81		86	
FLORIDA	#2	5/8/80	Gilchrist Co.	92	30	52	5	
ILLINOIS	#3	9/?/79	*Pekin	159	93	64	2	
	#3	9/?/79	*Carlinville	86	51	35		
	#3	10/17/79	Alexander-Franklin	45	9	36		
	#3	10/17/79	East Alton-Wood River	54	16	38		
	#2	12/4/79	Steger	?	?	?	AFT Win	
	#3	1/4/80	Harlem	447	184	263		
INDIANA	#3	2/20/80	*Tippecanoe Valley	98	51		1	Educ. Org.43
	#2	4/16/80	Fayette Co.	323	122	164	—	
	#2	5/19/80	*Batesville	71	36	34	1	
IOWA	#3	5/80	*U. of No. Iowa	Professors voted 73 to 45 against retaining dual affiliation with AAUP				
KANSAS	#3	10/16-19/79	*Wichita	2,883	1,491	1,279	25	
MARYLAND	#1	4/11/80	Montgomery CC	355	140			AAUP 194
	#3	6/12/80	*Allegany Co.	804	480	284	6	
MASSACHUSETTS	#2	10/10/79	*Springfield	1,440	829	577	6	
	#1	3/7/80	Springfield (teacher aides)	290	39	241		NAGE 8
	#1	3/28/80	*U. of Massachusetts (clerical & technical)	554	497		37	
	#1	3/19/80	*Somerville (administrators)	60	[illegible]		1	IND 29
	#2	5/29/80	*Massachusetts St. Coll. Administrators	349	133			NAGE 109
MICHIGAN	#2	9/10/79	*Benton Harbor (paras)	?	?	?		
	#2	3/20/80	*Oak Park	270	132	119		
	#2	5/13/80	*Harper Woods	63	43	20		
MINNESOTA	#3	11/29/79	Brainerd	450	211	234		
MONTANA	#3	11/8/79	N. Montana Coll.	71	32	37		
	#3	2/27/80	Power	[illegible]	0	12	3	
	#1	3/4/80	Corvallis	36	3	33		IND. 8
	#2	3/5/80	St. Ignatius	37	14	23		
	#3	3/19/80	*Kalispell	234	134	98	2	
	#3	3/25/80	Victor	18	2	15	1	
	#2	3/18/80	*Box Elder	21	12		3	IND. 6

	#3	3/26/80	Hamilton	85	38	46	1	
	#3	3/27/80	*Ronan	79	50	27	2	
	#3	4/15/80	Twin Bridges	21	0	20		IND. 1
NEW HAMP-SHIRE	#1	10/2/79	Dover	248	103	127	6	
NEW JERSEY	#1	10/15/79	Fairview	59	22	37		
	#2	10/17/79	Monroe Township	231	84	147		
	#3	11/2/79	Garfield	212	83	129		
	#2	12/17/79	Newark	3,200	1,250	1,891		
	#1	4/17/80	Mercer Co. CC (technical assistants)	38	8	30		
NEW MEXICO	#3	10/11/79	Albuquerque	4,100	1,701	2,375		
NEW YORK	#1	9/8/79	*Hudson Valley CC	150	135	3		IND. 12
	#1	9/11/79	*Fulmont-Montgomery CC	39	25		9	
	#3	12/18/79	Garrison	20	6	13		
	#2	2/[illegible]/80	Saugerties	211	57	154		
	#2	3/11/80	New York City (attendance teachers)	177	31	146		
OHIO	#2	10/3/79	[illegible] Clinton	159	57	85		
	#3	4/10/80	[illegible] Creek	105	62	42		IND. 42
	#3	5/29/80	[illegible]	626	286	249		
OKLAHOMA	#2	10/30/79	Oklahoma City	2,479	891	1,088		
OREGON	#1	2/2/80	*[illegible] CC	150	80	5		
PENNSYLVA-NIA	#3	10/10/79	*South [illegible]	127	65	61		
	#1	10/18/79	*Lackawanna JC	31	22		8	
	#2	11/13/79	Neshaminy	635	239	334		
	#2	11/15/79	Scranton	690	218	444	6	
	#2	12/12/79	Chartiers-Houston	105	49	52	1	
	#1	1/10/80	*Antioch University	24	13		10	
	#1	3/4/80	*SUN Voc. Tech.	25	21		2	
	#3	6/3/80	*Great Valley	265	119	107	1	
	#3	6/10/80	*Coatesville	420	288	103	1	
WISCONSIN	#2	2/13/80	*Eau Claire	540	287	139		

NEA - AFT FACT SHEET (1979-80)

	NEA	AFT
MEMBERSHIP	1,679,834	568,359
LOCAL AFFILIATES	12,036	2,208
K-12 bargaining agents	9,000	550
Higher education	701	288
Campus bargaining agents	313 (9 with AAUP)	256 (14 with AAUP)
STATE AFFILIATES	53	43
STAFF	283	84
Organizing, crisis and special projects	94) overlapping	51) overlapping
Negotiations	94)	51)
Higher education	95) staffs	51) staffs
Defense and legal help for teachers	24) overlapping	3
Affirmative action-human relations	24) staffs	1
Legislation	18	2
Political action	5	2
Training teacher leaders	7	1
Instruction and professional development	26	5
Research	32	3
Communications	19	7

(NOTE: NEA called on 115 (of 1,151) UniServ personnel for 1,153 workdays of assistance.
AFT called on an unidentified number of local and state staffers for up to 20 days of assistance each.)

	NEA	AFT
BUDGET	$67,045,500	$19,183,919

Expenditures for programs related to teacher welfare (includes organizing and servicing affiliates).	25,597,512		9,622,747	
Expenditures for labor affiliates	114,000	(CAPE) (.0017% of budget)	1,421,524	(AFL-CIO and subsidiary bodies) (8% of budget)
Expenditures for programs related to teacher rights	7,000,000*		475,766	
Cases processed	20,000	(including active cases initiated in previous years)	832	

*Includes $4,200,000 in legal assistance, $215,000 in subsistence loans and $75,000 in *amicus* briefs and significant litigation.

NEA, AFT AND AAUP RESOURCES (1979-80)

	NEA		AFT		AAUP	
MEMBERSHIP	1,679,834		568,359		55,955	
Higher education (active)	46,992		80,800		55,955	
LOCAL AFFILIATES	12,036		2,208		1,300	
Higher education	701		288		1,300	
Campus bargaining agents	313	(9 with AAUP)	256	(14 with AAUP)	87	(9 with NEA; 14 with AFT)
STATE AFFILIATES	53		43		51	
BUDGET	$67,045,500		$19,183,919		$2,308,700	
Expenditures for programs related to teacher rights	7,000,000*		475,766		10,300	
Cases processed	20,000	(including active cases initiated in previous years)	832		1,064	
STAFF	283		84		17	
Higher education	95)	overlapping	51)	overlapping	17	
Organizing, crisis and special projects	94)		51)	8)		overlapping
overlapping						
Negotiations	94	staffs	51)	staffs	3)	
Legislation	18		2		2)	
Political action	5		2		1)	
Communications	19		7		1)	
Research	32		3		2)	staffs
Training faculty leaders	7		1		0	
Faculty defense	24)	overlapping	3		3	
Affirmative action-human relations	24)	staffs	1		2	

*Includes $4,200,000 in legal assistance, $215,000 in subsistence loans and $75,000 in *amicus* briefs and significant litigation.

Excerpts from NEA Handbook on Questions and Answers on AFT

History

Still, the AFT has given the NEA a run for its money in the cities. How'd that happen?

The labor movement itself has always been strongest in the large cities, particularly those in the northeast. Frankly, the AFT got the jump on the NEA in some of the largest urban centers.

When did all that begin?

The AFT itself was created in 1916. Eight locals, previously affiliated directly with the AFL, joined together that year and received a charter as an 'international' union. Among them was the Chicago Teachers Union, now AFT/AFL-CIO Local 1, the Federation's oldest surviving affiliate.

Did the AFT 'get the jump on the NEA' in the cities because, as it claims, it was 'always right on such issues as administrator membership and collective bargaining?

No. Though the NEA was established in 1857, it did not become a *teachers* organization until this century — in fact, at about the same time as the AFT was created. Social, economic, and other factors were ripe for the formation of teacher-controlled organizations, and NEA and AFT both got going at about the same time.

Aha! That makes the AFT's growth even more remarkable, since the NEA — being 59 years older — must have been *much larger* than the AFT in 1916.

On the contrary, NEA membership didn't 'take off' until after World War I. In 1916, the year AFT came into being, NEA enrolled only 7,878 members — or, fewer than it had in 1887 — and its total nationwide membership had never been above 10,000. Between 1916 and 1920, the AFT probably enrolled *more members* than the NEA did. In 1920, however, NEA went to 52,850 members, and it's held a commanding lead ever since. In the meantime, AFT membership declined precipitously.

What caused the AFT's 'precipitous' membership losses?

Initially the 'Great Red Scare' and the 'Palmer Raids' of the post-war years. The AFT, like many other unions, was heavily infiltrated — especially in New York City — by avowed Communists. Teachers turned away from the Federation in droves.

The AFT was controlled by *Communists*? Come on, now — that sounds like Red-baiting.

It isn't. Read any biography of John Dewey or George Counts, two 'progressive' educators who were active in the AFT, and you'll read about the fight — which they joined — to regain control of the Federation from members of the American Communist Party.

In fact, the New York City Teachers Guild — one of the two groups that merged to form the United Federation of Teachers, Shanker's New York City local — dropped out of the AFT altogether in the 'thirties and became an NEA affiliate [!] because of the Communist domination of the AFT.

I take it that other AFT members did finally wrest control of the Federation away from the Reds?

Yes. After a long and bitter battle, the Communists were dumped in the late 1930s. The people who did the job were anti-Stalin socialists, most of them followers — and a few of them personal associates — of Leon Trotsky. Calling themselves 'Social Democrats, USA,' that group of anti-Soviet socialists — and their successors — still dominate both the UFT and the AFT hierarchies.

One upshot of the AFT's long fight against Communist domination is that the Federation and its leaders believe, to this very day, that they need to prove, over and over, that they are adamantly *anti*-Communist. If you read the AFT's newspaper, or its press releases, or Al Shanker's Sunday advertisements in the *New York Times*, you may have wondered why they contain so many attacks on Russia and other Communist nations. Clearly, the words and perspectives of teacher union leaders are not going to have a great influence on the design and implementation of American foreign policy; moreover, there are many *teacher concerns* that the AFT and its president ought to be addressing. Those concerns go by the wayside partly because of the ghost of the AFT's Communist-dominated past.

What about the issues on which the AFT claims *always* to have been right — administrator membership, for example?

The AFT has always permitted administrators to be members. In the past three years it has fought two bitter election battles to retain bargaining rights for some 300 administrators in Rochester, New York, for example; the unit includes both school principals and central office supervisors. The president of the Baltimore Teachers Union elected in the spring of 1980 was an assistant principal. And even in New York City, the national AFT president's home local represents *supervisors* of school safety (the Teamsters represent the security guards who work for those AFT supervisors).

In all, the AFT has at least a dozen administrator-locals; and probably two-thirds of its teacher locals pemit administrators to join. Like the NEA, the AFT pretty much allows its locals to decide the issue. The difference, however, is characteristic. The AFT constitution *says* that administrators and supervisors above the rank of assistant principal are ineligible for membership; and the AFT uses that constitutional provision to beat the NEA over the head. The reality is that the AFT simply ignores that provision of its constitution — and the percentage of administrators in the AFT's total membership is about the same as it is in the NEA's — or, around eight percent. A good analogy can be made by comparing the constitutions of the Soviet Union and the United States. The Soviet constitution is far more liberal; it guarantees its citizens many more freedoms than our constitution does. But, like the AFT constitution, it is not worth the paper it's printed on.

I thought that principals had their own AFL-CIO union.

They do. With Shanker voting in favor, the AFL-CIO executive council granted a charter in 1976 to the American Federation of School Administrators. AFSA and the AFT compete for members in some places. They also cooperate occasionally. And the AFSA and AFT presidents sit together as members of the executive board of the AFL-CIO's Public Employees Department, the AFL-CIO's Department of Professional Employees, and the AFL-CIO convention's education committe.

You've suggested that the AFT will 'wink' at its constitution whenever it's inconvenient to abide by it. Is that true also with all the non-school workers that the AFT is organizing?

Not now. In 1977 the AFT changed its constitution to permit giving membership to 'professionals' outside the field of education. It had already organized a substantial number of such non-school workers, of course, and the AFT president breezily dismissed his violations of the union's constitution. 'A strict constructionist would say we violated the constitution,' he told delegates to the 1977 convention, 'but we need more members.' He then asked for and received an amendment permitting him to do what he'd been doing for some time and intended to continue doing anyway. And while the amendment refers to 'professionals,' Shanker's interpretation of that term has been very 'loose constructionist.' It includes 'professional' law enforcement officers, 'professional' longshoremen, 'professional' ambulance drivers, 'professional' housing authority clerks, and so on.

What about collective bargaining. Surely there is something to the AFT's claim that it was 'always right' on that issue?

There isn't anything at all to that claim. Historically the AFT *opposed* collective bargaining for two reasons:

- Collective bargaining means *exclusive representation.* When teachers began demanding the right to negotiate contracts — in the late 1950s in several parts of the country, but chiefly in the northeast — NEA already enrolled about 750,000 members; AFT membership was barely 50,000. Though they knew that bargaining would be good for teachers, AFT feared it would be very bad for their union. That is, NEA would win most of the elections and — with the benefits of exclusive representation and dues deduction — it would freeze the AFT out.

The current AFT president, Al Shanker, tells of flying back to a meeting of the AFT executive council in 1961, shortly after the Federation had won bargaining rights in New York City. He and his associates expected to be greeted warmly. Instead the executive council almost voted to disaffiliate its New York City local so as to disavow an action which it feared would set bad precedents — precedents which would enable the NEA to keep the AFT permanently small.

- In addition to protecting the AFT's interests at the expense of teachers' interests, the Federation's opposition to collective bargaining was shaped by the influence of the Chicago Teachers Union, then the dominant force inside the AFT. Like other unions in 'the city that works,' the Chicago AFT had a sweetheart arrangement with the political machine of Mayor Daley. It saw no need for collective bargaining — and, in fact, was wary of its members getting the idea that true negotiations might give them better salaries, benefits, and working conditions. It wasn't until 1966 that the AFT local in Chicago finally came 'round to bargaining — and then only because the New Yorkers had seized control of the AFT.

But surely the AFT isn't lying when it claims that the New York City AFT was the first teachers union ever to sign a master contract?

Yes, it's lying. A number of NEA locals had signed master contracts as early as the 1940s. Moreover, the AFT can't even claim that it didn't know other contracts had been negotiated before New York's. The AFT local in Cicero, Illinois, had had a contract since 1944 — 17 years earlier.

What about strikes? Wasn't the AFT far ahead of the NEA in supporting local affiliates that went on strike?

Again, no. Both organizations became 'militant' at about the same time, and in response to the same social, economic, and historical factors.

As for actually conducting strikes, the NEA local in San Diego had called a walkout in the early 1900s; the NEA local in Buffalo went on strike in the 1940s. Many others preceded the AFT's first big strike — again, in 1959, in New York City.

The difference between the two organizations is once more typical. The NEA *discouraged* strikes — because most members opposed them. The AFT didn't merely discourage strikes: its constitution formally *condemned* them until the mid-1960s.

In any event, there is no significant difference between the NEA and the AFT today on the bargaining and strike issues, is there?

Yes, there are some very important differences. The guiding rule of behavior for the AFT is: 'We support what's good for the AFT, even if it's bad for teachers and schools.' That cynical 'rule' distinguishes AFT from NEA behavior on almost every issue, including negotiations and strikes. Here are just four examples:

- Texas law prohibits formal collective bargaining. Many teacher locals, however, 'consult' with their school boards — and the result is pretty much the same. Under that practice, the AFT won a representational election in Corpus Christi in 1979, and the NEA has *supported* its right to bargain. In San Antonio, however, the AFT actually took legal action — in concert with the National Right-to-Work Committee's National Association of Professional Educators [NAPE] — to *forbid* the school board from negotiating with the NEA local. For NEA, in Corpus Christi, it is better for teachers to be represented by someone than by no one; in San Antonio, all the AFT can think about is that it would be bad for the AFT's chances of gaining members if the NEA won good salary increases.

- At the University of Northern Iowa, also in 1979, the AFT tried to get enough signatures to qualify for a bargaining election against the NEA-American Association of University Professors coalition which already represented the faculty. When it failed, the AFT supported the National Right-to-Work Committee's campaign for 'no [collective bargaining] agent.' Even the AFL-CIO balked at that one; it told its affiliates *not* to cooperate with the AFT's union-busting efforts.

- In Rochester, New Hampshire, the AFT submitted an *amicus curiae* ['friend of the court'] brief supporting the school board's refusal to pay teachers a salary increase which the NEA had negotiated for them. The case went all the way to the state's supreme court, which ruled that the school board had acted illegally. Sadly, the AFT had won bargaining rights in Rochester between the time the board reneged on its agreement and the supreme court's decision. The *only* teachers who got their salary increases — retroactively — were those who had left the district before the AFT became the bargaining agent. The court ruled that the AFT had waived the right of all the others to collect their NEA-negotiated pay hikes.

- In South Point, Ohio, the AFT formed a local made up entirely of *scabs* in 1976. The school board had fired all of its teachers for going out on strike. In 1978 the NEA finally got the teachers their jobs back — and it had supported them and paid their legal costs in the meantime — but the AFT's strike-breaking efforts *almost* succeeded. The AFT's rationale was very simple: Getting more members is always good for the AFT, even if strike-breaking is bad for teachers, and — as an assistant to the AFT president pointed out — 'Scabs pay dues, too don' they?'

You must be aware that the AFT blames an unidentified 'new and inexperienced field representative' of the Ohio Federation of Teachers for the decision to organize South Point's scabs.

We're aware that that's how Al Shanker tried to get himself off the hook once the South Point scab project blew up in his face. It is, however, a darned lie, and here's the proof. The South Point scabs were given a charter as a national AFT local. Scapegoating some unidentified state fed staff rep for a decision made at the very top of the AFT reflects the same moral bankruptcy which produced the infamous Abernathy Telegram [*q.v.*].

You must be aware, again, that the AFT claims the NEA changed — became militant — solely because the AFT was taking members away from the Association — that the only way the NEA could survive was by ceasing to be a 'professional' organization and converting into a union.

We've heard that claim, of course. It's not true. As we've said before, NEA and AFT *both* became militant at about the same time and for the same reasons — for the same social, economic, and historical factors.

What were the 'historical factors' that caused both NEA and AFT to become 'militant at about the same time'?

According to the national AFT president, it happened because — after World War II — more and more men entered what had traditionally been a mostly female profession. NEA and its affiliates believe that that is a simple-minded — not to say *sexist* — explanation. It does, however, reflect the AFT leader's recognition that the reason for the change in NEA was *not* 'the challenge of the AFT.'

Chief among the real reasons that both NEA and AFT changed — and changed about the same time — was the unprecedented economic growth of the 1960s. Almost everyone was becoming more prosperous — or, less poor — everyone, it seemed, except teachers. Since education was in good part responsible for the nation's affluence, teachers justly resented the fact that they — the people who provided the educational services which made that affluence possible — were excluded from the new prosperity. Through their organizations, teachers then sought collective bargaining rights and declared their willingness to strike in order to obtain good contracts.

Structure and Governance

The 'atrocities' you've mentioned — the AFT organizing scabs, for example — how are such things possible? Why would any group of teachers willingly sacrifice the well-being of teachers and schools to the partisan advantages of a union?

Teachers probably wouldn't. The most significant fact about the American Federation of Teachers, however, is that it is *not* controlled by teachers. It is entirely controlled by career trade unionists — by union staff employees who've 'converted' themselves into elected leaders.

That sounds like something the AFT has accused the NEA of — namely, 'staff domination.'

You're right. It is something we should never have let the AFT get away with. What the Federation did, of course, is what propagandists for bad causes have always done: They deflect attention from their own shortcomings by accusing their rivals of the same sins. Hitler, for example, screamed bloody murder about the 'persecution' of ethnic Germans in Sudetenland Czechoslovakia; and no one more vigorously objected to the 'lack of civil liberties' in the United States than Josef Stalin. But — you be the judge:

- No NEA staff employee may run for or hold elected office. That principle holds true in state and local associations as well. All such positions must be — and are — occupied by *members*; and all Association policies and programs are established by elected teacher-representatives. Staff people merely implement what teachers decide. In short, the line between elected leaders and appointed staffers is very strong in the Association.
- There is *no line* in the AFT and its affiliates. Both the current AFT president and his predecessor were national field reps — that is, full-time AFT staff employees — before 'converting' themselves into elected leaders. In fact, 27 of the 31 members of the AFT executive council are full time on the payroll of the AFT itself or of an affiliated union. One of them is the *staff director* of the AFT president's New York City local; another is a *field rep* for the Massachusetts Federation of Teachers; still another is an employee of the Florida AFL-CIO.

We could keep going virtually forever. NYSUT's executive director is also a member of that AFT affiliate's board of directors and executive committee; both of the NYSUT officers from New York City had been union employees for many years before they became 'born-again teachers.' The AFT affiliate in Florida, FEA/United, has had three presidents in six years. The first had been executive director before his 'conversion'; the second had been the union's business manager; the current president was executive director of the Dade County [Miami] local before declaring himself an elected leader.

To play devil's advocate: What's wrong with staff people 'converting' themselves into elected leaders — just so long as they can get the votes to win elections?

Two things are wrong:

- A staff rep is *paid* to do 'favors' for teachers — to handle their grievances, for example, to resolve other job- or union-related problems, and even to negotiate contracts. AFT field reps who run for elected office go to the people they've helped and say: 'One good turn deserves another.' It isn't right that they should first get *paid* for doing a job, and then claim that what they did amounted to 'favors' that must be *re-paid*. Further, it puts the teacher who's been full time in the classroom at an insuperable advantage: He or she did not have the opportunity to provide such 'favors.'

Take the AFT president, Al Shanker, for example. For almost four years he traipsed around New York City doing 'favors' for UFT members. When election time came, he organized the people he'd helped into a city-wide campaign committee that his opponent was simply unable to match.

- Being out of the classroom and travelling all over — a city, a state, or the country — also gives a staff rep *visibility*. Shanker's opponent in New York, for example, was far less well-known than the AFT field rep. As a teacher, the other candidate had been in his classroom every day, while Shanker was out meeting teachers, addressing meetings, and doing his 'favors.'

So it's simply a matter of an unfair advantage?

No: There's one more consideration. People who've been out of the classroom for 10, 20, or more years are prone to be out-of-touch with the immediate needs, wants, and problems of the organization's members. The Association believes that it's very important for policies and programs to be decided by the people whose interests the organization is supposed to serve. The Federation believes that no one knows how to run a union as well as its own professional staff employees, and that teachers must therefore be kept out of the decision-making process within the AFT itself.

One of the greatest disadvantages of that system is that it fosters a cut-throat rivalry for elected office — and all its 'rewards' — which keeps union leaders' attention focused on 'enemies' *inside* the AFT rather than on the *external* enemies of their teacher-members.

Is there much anti-staff feeling, or criticism of 'staff domination' within the AFT?

Some. The few real teachers on the top UFT, NYSUT, and AFT governing bodies occasionally grumble about decisions that are obviously contrary to the best interests of teachers. But since they themselves are given stipends — so long as they don't criticize publicly — nothing much ever comes of their complaints. Outside the top ranks of the AFT, the union's staff officers don't let on that they have little in common with their members. The UFT's staff director, for example,

Again, some examples would be useful.

We've already talked about San Antonio, Northern Iowa University, Rochester, New Hampshire, and South Point, Ohio. What follows is just a very partial listing of other 'horrors.'

- NEA maintains *two* multi-million dollar defense funds to protect the civil and professional rights of its members; together with its state affiliates, NEA *spends* over $12 million a year on better than 18,000 individual legal actions for its members. Late in 1979, stung by publicity given to the tiny size of the AFT's defense fund — a mere $20,799 on March 31, 1979 — the union's national president decided to do something about it. His answer was *not* to stop spending over $1 million a year organizing non-school workers; that is, his decision was not to build up the AFT's defense fund. Instead, he used his weekly *New York Times* advertisement to demand that the NEA be compelled to pay 'more than a quarter of a million dollars in property taxes each year' — or, in other words, that the NEA's defense fund be *reduced*. [NEA's charter from Congress makes it tax-exempt. Given the status of the District of Columbia's tax laws, there is no more reason for the NEA to pay property taxes on the teaching profession's 'national home' than there is for *hundreds* of other organizations.]
- In Dade County, Florida, the AFT local negotiated a provision calling for the abolition of tenure. So long as teachers have job security through the law, the AFT reasoned, they are not entirely dependent on the union. The AFT local would substitute a grievance procedure for tenure provisions. Teachers would then be forced to appeal to the union for help — and they would know they had better be AFT members. The AFT was so *eager* to abolish tenure and gain its organizational advantage, that it agreed dismissal cases should be tried by a three-member panel: one selected by the union, one by the superintendent, and the third by the first two-named — from a list of supervisors compiled by the superintendent (!).
- Also in Dade County, the contract says that union officers and building stewards get first crack at all summer jobs. 'Mere' teachers get only the leftovers — the jobs that union leaders and their allies don't want.
- The AFT fought like the blazes against a separate, Cabinet-level Department of Education. It went so far as to form an alliance with the National Right-to-Work Committee and its two 'teacher' branches — the National Association of Professional Educators and the Concerned Educators Against Forced Unionism — and also with some of the most anti-teacher lawmakers in Washington. Among the latter was Sen. Daniel Patrick Moynihan [*q.v.*], the father of tuition tax credits, and Sen. S. I. Hayakawa, a right-winger who has called for an end to *all* federal aid to education. The *motive* for the AFT's opposition to an Education Department was brutally cynical: It would be very good for teachers, but very bad for the AFT, since NEA would get all the credit for the Department's creation and would have much more influence in the Department than the AFT, the AFL-CIO, or both of them combined.
- Minnesota law permits an organization with bargaining rights to have 'fair share' [agency fee] payments deducted from the salaries of teachers who refuse to join. Because the Association accepts the principle, it has not interfered with the AFT's collection of the agency fee. But the AFT has filed legal suits against the Association *in every district* where an NEA affiliate has negotiated fair share. To this date — the spring of 1980 — Association monies are still tied up, and have been for several years. Nor is Minnesota alone: The AFT has fought Association agency fees from California to the New York islands; and the Federation has contested those fees despite the fact that it, too, favors agency shop in principle.

- And not just in principle. Percentage-wise the AFT has many more locals collecting agency fees than the NEA does. Moreover, it is ruthless both in imposing and in exacting the fee. At the State University of New York the AFT's record was so poor that only 4,000 of 18,000 faculty and staff members had joined the union; the moment it had the chance, in September 1977, the AFT slapped the agency fee on the other 14,000. And at C. W. Post College, also in New York, the AFT insisted that seven tenured professors be fired for refusing to authorize agency fee deductions from their paychecks.

- In 1973-74 there was a real chance that NEA and AFT might merge into a single teachers' organization. Merger negotiations actually took place. AFT refused to compromise on any of the big differences between the two organizations. [See 'Teacher Unity' section, below.] The key reason the talks broke off, however, was that while unity would be very good for teachers, it would be very bad for the current AFT *president*. Here, in fact, is what the 1968-74 AFT president, David Selden, writing in the June 1979 issue of *Labor Today*, had to say about the aborted NEA-AFT merger talks:

> Shanker's opposition to AFT-NEA merger is easy to explain: He thinks he could never be president of an organization three fourths of whose members would be former NEA members. If he can't run it, to hell with it.

That the former AFT president's observation about his successor is not mere sour grapes is confirmed by this report which appeared in the January 15, 1975 issue of the *New York Times*: 'Now that the 46-year-old former mathematics teacher [Shanker] is head of the national organization [AFT], what are his ambitions? "To be head of whatever comes out of a merger with the National Education Association," he said.'

Does Shanker's 'staff-officer' system mean the AFT has no employees covered by collective bargaining agreements negotiated by their own, staff unions?

No. Most clerical staff people — at the UFT as well as NYSUT and the AFT — are represented by a union of their own choice, though Shanker has designated as many as possible 'confidential' to prevent them from being unionized.

Both in the UFT and in the AFT he has built up the 'political' and management staffs as large as possible. At the UFT, for example, there are now just half a dozen field reps (who are covered by a contract); all other professional staff work is done by 'assistants to the president,' 'released-time officers' (some of whom have *never* taught), and management personnel.

Only in NYSUT is there a substantial number of professional staffers covered by a collective bargaining agreement — another vestige of the pre-merger NEA affiliate's structure in that state.

Why is Shanker so averse to his own staff being unionized?

A unionized, civil service staff is supposed to stay out of the politics of the organization for which they work. Shanker wants his subordinates to serve, above all, his own ambitions — and to ensure he is reelected and reelected and reelected again.

Secondly, of course, staff people without contracts serve 'at the pleasure of the president.' His minions must put Shanker's interests — and the AFT's interests — ahead of the well-being of teachers and schools, if they are to keep their jobs.

Shanker was confirmed in his opposition to employing unionized staff people when the UFT's field reps went on strike in 1969. There were many more of them then than now, and Shanker fired the ring-leaders. The National Labor Relations Board subsequently cited Shanker for an unfair labor practice (putting him in the company of J. P. Stevens and a lot of our school boards), and he resolved to wipe the union out as soon as possible.

What about the national AFT?

Shanker has hired as many people as possible in job-classifications outside the two bargaining units — professional and clerical — which exist for AFT staff employees.

One interesting fact. Until 1980, the professionals in AFT headquarters were in a separate union from the Federation's national [field] reps. The two staff unions then merged into a single organization. It's called the American Federation of Teachers Staff Union — or AFTSU — and it's *independent* of the AFL-CIO.

You've suggested at several points that the AFT is less than democratic — that it's controlled by one man, or by his clique. How is that possible?

You need to start with the AFT's New York City local, the 70,000 member United Federation of Teachers. The UFT's president is Al Shanker, who's also the national AFT president; and the UFT is his power-base. It's also a tightly controlled 'club.'

- Only about a third of the UFT's members vote in the secret-ballot contests which elect the union's officers, executive board, and state and national convention delegates. (The federal Landrum-Griffin Law requires the secret ballot in local elections.) Even just a third of the UFT's membership is 20,- or 25,000 people, however, and that many members are simply not going to know each and every one of the 300 or more names on the ballot. The Shanker machine therefore makes their job easier. All they have to do is place a single mark on the ballot — next to the words 'Unity Committee,' which is the name of Shanker's caucus, or political party. That mark represents a vote for Shanker himself and for all of his running mates — the other eight officers, the 70-odd members of his executive board, and all 300 convention delegates.

- Shanker, of course, is very well known. He was won enormous publicity as the leader of five strikes since 1967; he frequently appears on radio and television and in the newspapers; he spends about $150,000 a year of his members' dues to pay for a weekly advertisement — featuring his name and picture — in the *New York Times*; and he frequently communicates with UFT members by mail — all that in addition to his messages and pictures in state and national AFT publications. By contrast, his opponents are full-time classroom teachers and relatively unknown. A heavy majority of rank-and-file New York City teachers prefers the known to the unknown; and, faced with the prospect of plowing through a ballot with hundreds of unfamiliar names on it, a heavy majority of UFT members simply puts an 'X' in the box next to Shanker's caucus. That 'X' elects Shanker's entire slate.

- That slate is nominated by the Unity Committee, a 'caucus' made up of fewer than 400 people — out of a total UFT membership, remember, of 70,000. The most active third of the 400 are on the UFT payroll full time. They keep their high-paying jobs just so long as they vote right in the caucus. The other two-thirds are given all-expenses-paid trips to the state and national conventions — and many of them also hope for full-time UFT, NYSUT, or AFT jobs sooner or later — and they, too, had better vote right. All votes in the caucus are 'open,' since Landrum-Griffin does not govern voting rules in union caucuses, so that Shanker and his clique can punish those who disagree with them. [In 1972 two teachers were expelled from the Unity Committee for supporting a Congressional candidate the UFT had opposed; in 1974 a teacher was expelled for advocating higher salaries for evening school teachers.] The caucus, of course, always 'nominates' Shanker — and ratifies all his choices for other positions — *unanimously*.

How does control of his local give Shanker control of the New York State United Teachers?

The UFT Unity Committee has one more rule: Once a decision has been made by the caucus, then *everybody* must support it at the NYSUT and AFT conventions. Shanker therefore walks into a NYSUT convention with 40 percent or more of the vote in his back pocket. [Though NYSUT's membership is in the neighborhood of 200,000, many of the smaller locals cannot afford to send delegates. No more than 175,000 votes are cast in those conventions.] There are, as well, other mechanisms to assure Shanker's control.

- One person/one vote does not apply at NYSUT or AFT conventions. Instead, delegates representing a local divide the number of their members among themselves. A local which enrolls 100 members and sends two delegates would thus be represented by two people casting 50 votes each. New York City delegates each cast over 200 votes. What that system means is that Shanker can keep his convention delegation very small — and 300 out of 70,000 *is* 'very small — while still making sure that New York City exercises the maximum possible influence in the NYSUT and AFT conventions. (It also permits him to keep the UFT Unity Committee small; if he needed more 'bodies' for the state and national meetings, he might have to accept some caucus members whose obedience had not been tried and tested.)

- Even if every local in New York State sent a delegate, Shanker's UFT would cast over a third of the total vote in NYSUT conventions. Those inside the state union who want a share of the power — or who

are on the make for jobs or stipends — don't have to be trained mathematicians to see that playing along with Shanker is the safest bet.

Almost everyone else in the entire convention would have to be opposed to him in order for the opposition to win anything; but Shanker needs only a handful of the delegates from outside New York City to have an absolute majority.

- To make sure he always has that majority — and much more than a majority — those NYSUT leaders who can deliver any significant number of votes are very well taken care of. Almost half the members of NYSUT's board of directors are now full-time union employees; nine of its 13 executive committee members are full timers, and the others get $9,000 annual stipends for attending ten all-expenses-paid meetings (with the union paying for their subs). If they want to keep their jobs, or stipends, they must toe Shanker's line. Only one executive committee member ever acted independently — not *against* Shanker, but without his prior approval — and he was promptly disciplined. He lost his stipend, then $6,000 a year, and the stipend was immediately raised to $9,000 — to make disobedience even less likely.
- At the state convention as in the UFT, a 'Unity Caucus' meets to decide all issues — who will be nominated for NYSUT office, how the caucus is to vote on crucial issues — before those issues arise on the floor of the convention itself. With his huge New York City contingent and his bought-and-paid for allies from outside the City, Shanker controls well over two-thirds the NYSUT caucus. Its votes, too, are by open, roll-call ballot — as are those at the convention itself — and anyone who wants to keep his or her job — or simply to remain a member of the caucus, where all the decisions are made — had better vote 'right,' Shanker's way.

Does that same system work in the national AFT?

Yes. When NYSUT delegates go to the AFT convention, they are bound by decisions made in the NYSUT 'Unity Caucus' — and New York casts more than half of all the votes at AFT meetings. The national union also functions with the open, roll-call ballot — both in 'Progressive Caucus' meetings and in the election of officers. The desire to be on the winning side plays a role in the national — as does the fact that 26 of the national AFT's vice presidents are full-time employees of the AFT itself or of an affiliated union. (The 30 veeps, together with the president, make up the union's executive council.)

You've said that a few UFT and NYSUT caucus members have dared to defy Shanker, and that they've got their just desserts as a result. Are the rest of them really that gutless?

It's more complicated than that. It's fairly easy to understand how a person supporting a family — and dependent on Shanker for his or her income — is going to think hard and long about disagreeing with the UFT-AFT president. Even the person getting 'only' a $9,000 stipend, if he or she is a teacher making $17,- or $18,000 a year, will be hurt pretty badly if Shanker chooses to take that money away. (The NYSUT executive committee member who was stripped of his stipend for acting independently in 1978 asked plaintively: 'I wonder if Al will buy my boat?') Next come all those people who hope to get the jobs and stipends once those that have them move on, or are shoved aside. There are, finally, the many delegates who aren't that aware and don't care that greatly about union issues, but who want to hob-nob with Shanker and his lieutenants, and who know that the way to be on the inside is always to follow the party line.

In New York State's Southern Tier, one NYSUT board of directors member is almost a legend for having called Shanker a 'congenital liar' — in front of a couple of dozen people — during a 1978 NYSUT election campaign. How has she been able to retain her board seat if Shanker has such total control?

The 1972 Association-Federation merger agreement in New York was a 'compromise.' Shanker has absolute control over 'only' about two-thirds of the board seats. The director to whom you refer is electged and by a largely small-town and rural constituency. She herself is not ambitious for any of the perquisites Shanker can offer; and the national AFT president can do nothing either for or to the teachers who elect her.

The question then arises: How can someone who considers Shanker a 'congenital liar' stay in the AFT, and even on a state federation's board of directors?

The director you've referred to believes that the power, in New York, lies with the AFT; she tries to act as a 'conscience' within NYSUT, and hopes that her presence on the board prevents at least *some* anti-teacher behavior.

For others, unhappily, it's a matter of economics. During that same 1978 NYSUT election battle, one of three staff-officers told a group of about 40 union leaders that: 'The enemy is *not* the NEA. The enemy is not even the school boards. The enemy is *Al Shanker*.' For that officer to resign in protest would mean giving up more than $60,000 a year in salary and perquisites; to this date, the officer has been unwilling to do that.

There is, finally, the difficulty — for *most* people, perhaps — of admitting that: 'I was wrong. You were right. The AFT is bad. I'm going to eat humble piece, admit my mistake, admit that the people I've been fighting were more clear-sighted than I, and join the NEA.'

Why is the open, roll-call ballot necessarily undemocratic, if that's the way delegates to AFT conventions want it?

What open, roll-call ballots do is give the Federation's staff-officers a means of checking on how each delegate votes — or, as the AFT president puts it, 'holding them accountable.'

- Most delegates are not terribly well-informed about issues at AFT conventions. Lacking other direction, they'll vote as the union's leadership recommends. That's particularly true where an issue seems very important to the staff-officers isn't very important or isn't understood by rank-and-filers, and is decided by an open ballot.
- With a secret ballot, new leadership could arise and challenge the incumbents. The fear of being 'held accountable' would not prevent individuals from voting against their staff-officers' recommendations, and once the leadership had been shown vulnerable — had been defeated — people would surface to lead the dissenters. That possibility is entirely precluded so long as the slightest disagreement can produce threats like, 'play ball or I'll make sure your members don't get much of a salary increase.'

As to whether a majority of AFT delegates favor the open, roll-call ballot, there is at least reason for doubt. The system was not instituted until 1974. Until that time, AFT conventions voted by secret ballot. That wasn't much to Al Shanker's liking. In 1972, for example, he personally had come in *eighth* on a slate of 19 vice presidential candidates — a stinging humiliation.

Then, in 1973, the New York merger gave that state a majority of the votes for the first time. Shanker quickly pushed through the open, roll-call ballot amendment. (Most New Yorkers had little knowledge of the AFT; they voted as their fellow New Yorker, Shanker, asked them to. The open, roll-call ballot was a fact of life before they realized what had happened.) In the very first election conducted by the open, roll-call ballot, Shanker ran for president — and won handily. In the years since he's been reelected with 80 percent or more of the vote. There have been — and, in the foreseeable future, will be — no more 'stinging humiliations' for the AFT's top staff-officer.

Didn't anybody fight against the open, roll-call ballot proposal?

Yes. Shanker's predecessor as AFT president, David Selden, publicly opposed it. Beginning in late 1972, Selden called for the election of officers by a secret-ballot referendum of the entire AFT membership. Shanker then had the AFT executive council endorse the open, roll-call ballot and *order* the president to follow 'union policy.' When Selden insisted that he had a right to espouse positions different from Shanker, the executive council stripped Selden of his right to speak for the union — and Shanker soon announced his candidacy for AFT president.

Hadn't Shanker and Selden previously been close friends?

Even more than that. Selden had been the first to notice Shanker's 'talent,' and he got Shanker his first union job — as a national AFT field representative. Shanker has often said: 'I learned everything I know about organizing from Dave [Selden].' He learned nothing from Selden, of course, about permitting dissent or protecting democracy.

Now that Shanker has achieved virtually complete control in the AFT, can't he 'loosen up' a bit?

'Can't he'? Who knows? What's certain is that he *hasn't*. In fact, he has moved recently to suppress what little potential still exists for disagreement. At the 1979 AFT convention, new 'rules' for caucuses were established. No group of delegates will be recognized as a caucus — or permitted to run a slate of candidates on the ballot — unless it: (1) posts a $100 bond to ensure its good behavior, (2) submits a petition signed by 25 delegates, and (3) agrees to act in 'a responsible manner.' (Shanker's people, of course, are the judges: If they decide their opponents have not acted 'responsibly,' the others lose their $100.) All three of those conditions must be met 30 days in advance of the annual convention — a bit of insurance against dissidents coming together over some issue which arises on the floor.

Quite a machine!

Yes: But put it together with the fact that all the big decisions are made by union staff employees — including those who are 'born-again teachers' — and you've got a machine that is guaranteed to produce decisions that are good for the union, always, but good for teachers and schools only incidentally.

Has there ever been anything like it?

The whole 'machine' was adopted — lock, stock, and barrel — from Josef Stalin's practices. In fact, the definitive work on Stalin's machine is Max Schachtman's *The Bureaucratic Revolution*. Schachtman, the late husband of Shanker's executive assistant at the UFT, was a close ally of Leon Trotsky and one of the builders of the anti-Soviet socialist movement in the United States [see indexed entry under 'Social Democrats, USA']. His book describes how the 'professional staff' of the Communist Party, along with elements of the Russian bureaucracy, completely subverted democracy in the Soviet Union. The mechanisms used — from local 'caucuses' right up through the national 'executive council,' and including both 'open, roll-call ballots' and the 'cult of the personality' — were the model for Shanker's UFT-NYSUT-AFT system.

But Stalin had police power behind him: He could *kill* you if you didn't toe the party line.

Not at first. In his biography of Stalin, Harvard Professor Adam Ulam points out that, in 1937, Stalin told the 130-odd members of the Central Committee of the Soviet Union's Communist Party that he intended to kill two-thirds of them within two years. At that moment any of the delegates could have arisen and demanded that the Minister of Health seize Stalin and commit him to a mental institution. That was still possible in 1937; moreover, at least two-thirds of the delegates had nothing to lose by trying. But none did. Each and every one of them hoped to be among the minority that would live — with jobs and perquisities intact — still enjoying Stalin's favor.

That's really horrible.

It's worse than that. Within two years Stalin had murdered *more* than two-thirds of the Central Committee.

In NYSUT, when that one executive committee member was purged for acting independently, didn't any of the others rise up in protest?

Not one — at least to Shanker's face. And another board member jumped at the chance to take the purged member's place and collect his $6,000 — now $9,000 — 'stipend.'

Conceding that UFT-NYSUT-AFT 'leaders' will gladly 'kill' one another to hold onto their jobs and perquisites, what does that mean to the *teacher-member*?

As we've suggested elsewhere, it means that he or she belongs to a union which always puts its own, organizational interests ahead of the interests of teachers and schools. It means a union which organizes non-school workers, and then argues that 'we can't say education is our number one priority — we have got to keep our non-school members happy.' It means a union which endorses candidates for political office not because they're good for teachers and schools, but because they're in tight with the union's 'staff-officers' on some other set of issues.

Once again, I have to ask you for examples.

A union controlled by *teachers* wouldn't recruit scabs; wouldn't go to court to *deny* teachers a salary increase; wouldn't try to abolish tenure. We've already talked about these atrocities. Here are some more.

- In 1972 Daniel Patrick Moynihan published a celebrated essay — in *The Public Interest*, a small but highly influential quarterly — in which he argued that the historic mission of the public schools was to reduce the gap in income between the rich and the poor; that the schools were no longer doing that, because teachers had entered the ranks of the well-paid (their incomes, he pointed out, were in the top 20 percent nationally); therefore, when *everybody* is required to pay school taxes — 60 to 80 percent of which are used to pay teacher salaries — it amounts to taking from the poor to 'poor' to give to the 'rich': teachers. To restore the balance Moynihan urged (1) a moratorium on all tax increases for the public schools and (2) massive state and federal aid for private and parochial schools.

Shanker cited Moynihan's argument throughout 1973 and 1974, both in appealing to teachers to join the AFT and also in arguing for an NEA-AFT merger on the AFT's terms. He said, specifically, that Moynihan was the leader of anti-teacher forces which were threatening the very existence of free, public education.

In 1976, because of Moynihan's ties to the AFL-CIO and the Social Democrats, Shanker (1) urged him to run for the Senate, gave him his personal endorsement, and then delivered NYSUT-AFT's endorsement as well, and (2) presented Moynihan with the UFT's 'John Dewey Friend of Education Award.'

As soon as he got into the Senate, Moynihan introduced his tuition tax credits bill — a measure which Shanker was soon compelled to admit would 'destroy the public schools.' That bill came within *one vote* of passing in the House of Representatives. Shanker had known all along that Moynihan intended to push for massive parochiaid. In a union run by and for teachers — and run democratically — Moynihan could never have won endorsement for his Senate candidacy. In a union run by and for its own 'staff-officers,' priorities and policies are different. (Moynihan, incidentally, won by just 9,000 votes in a five-candidate Democratic primary. Shanker and NYSUT-AFT promptly and properly took credit for his nomination and election.)

- Similarly, in 1974 Hugh Carey won NYSUT's endorsement for governor by promising to work for repeal of New York's two-for-one strike penalty (under which teachers lose two days' pay for each and every day they're on strike) and to propose significant increases in state aid. He reneged on both promises, saying he had 'changed my mind' on the two-for-one, and calling for *reductions* in state aid in three of his first four years in office.

Thousands of New York teachers lost their jobs as a result of Carey's pennypinching budgets; teachers in Lakeland and Levittown lost 68 and 86 days' pay, respectively, for 34- and 43-day strikes because the governor refused to propose repeal of the two-for-one. In 1978, all the same, NYSUT *endorsed* Carey for reelection.

Why? Because, though he had been very bad for teachers, Carey had been very good for the AFT: He had fought for and signed an agency fee law — which more than made up for the dues of those teachers who had been laid off, and which also made it very hard for NEA to make inroads into New York State. And, again, *teachers* would not have led NYSUT into endorsing a governor who had been so damaging to teachers and schools; only the leaders of a union which put other priorities first would have done such a thing — and did.

- The only contested election of officers in NYSUT history took place in 1978. Shanker wanted a longtime New York City 'go-fer' to replace the incumbent, who had been the state EA president at the time of the New York merger. Because the fear of 'New York City domination' is a constant threat to NYSUT's intact survival, Shanker announced that New York City's delegates would abstain from voting and that he himself would remain 'neutral' in the contest. He then did everything possible to ensure his henchman's election. The one act which is most relevant to this discussion of the disadvantages of one-man rule is Shanker's warning to the president of the NYSUT-AFT local at the State University of New York. Shanker threatened to sabotage salary negotiations at the University unless the local leader supported the New York City candidate. In other words, 18,000 AFT members would have been given reduced pay hikes because their local AFT president had refused to 'play ball' [Shanker's exact words] with the national AFT president's candidate.

What gave Shanker any say at all in the professors' salary talks? And what happened in the election?

The State University local negotiates directly with the governor's office. The governor's office naturally pays more attention to NYSUT than to its State University local. Though Shanker's 'clout' has never been great enough to get the professors a really adequate salary increase, it would undoubtedly have been enough to *reduce* their raise. Just about any union leader can 'persuade' management *not to give* very much to his own members.

Shanker's henchman *lost*, in the Unity Caucus, by 52,000 to 48,000 votes.

Aha! So Shanker *doesn't always get his way.*

In this case, that's right. As he himself complained later, he 'lost control.' What happened is this: Over Shanker's objections, the Caucus decided to conduct the nominating vote for president by secret ballot (that is, in the most important election in its history, it threw out the AFT system and adopted the NEA system; it then, however, reverted to the open, roll-call ballot). Freed for once of being held accountable by Shanker, a narrow majority re-nominated (and therefore re-elected) someone the national AFT president didn't want. Since then, of course, the NYSUT president has been the most obedient state leader in the whole of the AFT.

But doesn't the fact that Shanker 'lost control' prove that he's not a *total* dictator?

If it does, then *nobody* is a *total* dictator. Even Josef Stalin 'lost control' in the early days of World War II. We should point out, moreover, that the adoption of a secret ballot at one NYSUT caucus meeting is not the only instance in which, according to Shanker, he's 'lost control.' In 1975, he says, his New York City local 'got away from me' and went on strike against his will. [See indexed entry under 'Shanker, Albert.']

The AFT's Record

In organizing drives and election campaigns, Federation representatives always claim that 'the AFT bargains better.' Does it?

AFT reps who value their jobs should *never* contradict their national president — and here is what Al Shanker told the New York State Teachers Association's delegate assembly in April 1972:

> If you took an NEA contract and an AFT contract, and didn't know which was which, you wouldn't be able to tell the difference. We *negotiate* for the same things and we *win* the same things.

The statement was part of a speech in which Shanker was appealing to Association leaders to approve a merger with the New York AFT. He may now *regret* his candor. EA people should never *forget* it.

Do you agree with Shanker's assessment — that NEA negotiates as well as AFT?

NEA locals negotiate *better*. Let's look at just a handful of examples.

- Baltimore, Maryland, is a school system which has gone back and forth between the two organizations. The following are the *average annual salary increases* negotiated by AFT and NEA since the first Baltimore contract. (The lower figure is generally for first step on the B.A. schedule, the higher for the 14th step — or maximum — on the M.A. schedule. [The EA was decertified following its 1976 strike, and the teachers had no bargaining agent until 1978.])

AFT (1968-72)	NEA (1972-76)	AFT (1978-80)
$ 313 — 450	$ 474 — 934	$248 — 388

The AFT's record in Baltimore is even worse than that comparison makes it appear. In 1979, for example, the AFT won a mere 3.5 percent pay hike — and did so only by agreeing to *give up* half a year's increments. The AFT also lost much of what the NEA had gained in 1972-76. The Federation replaced the word 'shall' with 'should' in the contract's just-cause provision; completely eliminated *seniority* from the involuntary transfer clause; and agreed that teachers should pay half of all future increases in their medical plan, where previously the school board had paid the entire difference.

- When Shanker himself has toured the nation boasting about his genius as a negotiator, other labor leaders in New York City have laughed up their sleeve — and so have other *teacher* leaders in the metropolitan area. Teachers have always done less well than other municipal workers. In the 1980 negotiations, for example, the transport union won pay hikes averaging 11 percent, the uniformed services nine percent, the teachers — despite five years of minimal or *no* raises — only eight percent.

Hundreds of NEA locals have negotiated higher salaries than the AFT's 'flagship local' [New York City's UFT]. The B.A. minimum in Montgomery County, Maryland, is $2,000 higher than UFT-AFT's, and its M.A.+30 maximum is $4,000 higher; the B.A. minimum is more than $4,000 higher in Fairfax County, Virginia, and the M.A.+30 maximum is almost $6,000 higher than New York City's; and so on. Both NEA and AFT locals in the New York City suburbs have won salaries several thousand dollars higher than UFT-AFT's, with the *very* highest belonging to NEA affiliates.

- In 1978 the AFT local in Levittown, New York, called a strike because its negotiations were going so poorly. After 43 days on the picketlines — with teachers losing 86 days' pay under New York's Draconian *Taylor Law* — the AFT told its members to go back to school. Despite the 'clout' of a nearly 100 percent effective strike, the AFT had won -- *no pay hike at all* in the first year of its new contract and only minimal 5.5 and 6.5 percent increases in the other years.

- In the fall of 1979, the San Francisco AFT went on strike for 32 days. Teachers had received no salary increases in either of the previous *two* years. Their union had asked for 15.7 percent. It was able to win only 5.7 percent. (The union claims it won a 7.5 percent raise. But since the date on which pay hikes will henceforth take effect was moved back to November 1st — from September 1st — the *annual* increase was 5.7.)

- At the very same time, teachers in the adjoining Jefferson [Daly City] High School District went on strike for 45 days. Their AFT local did even worse than its big brother in San Francisco. It 'won' a mere 1.5 percent pay hike retroactive to September 1st [which gave 'scabs' a greater benefit than strikers], with another two percent effective the following February. As opposed to the $4,998 which the average striker had sacrificed, the two pay hikes *combined* averaged less than $450. And the AFT also agreed to a 75 percent *cut* in extracurricular pay.

- In Springfield, Massachusetts, and Stamford, Connecticut, prior to AFT representational wins — in 1970 and 1975 respectively — the teacher salary schedules were regional *leaders*. As soon as the Federation took over, each schedule began to fall behind. By the time EA locals ousted the Feds, in 1979 and 1980, teacher pay in both cities was among the *lowest* anywhere around.

Can you explain why AFT locals — in Springfield and Stamford, for example — would do less well in negotiations than NEA locals. Was it because they had different leaders?

Not entirely — not even primarily. Many of the AFT leaders in each city had been active in the NEA local before the Federation seized bargaining rights, using its customary 'pie-in-the-sky' promises. (Moreover, most of the better local AFT leaders in both districts have now returned to the Association.)

What really made the difference in Springfield and Stamford — and elsewhere — was the support available to the local negotiating team from NEA and its state associations, the Massachusetts TA and the Connecticut EA, as opposed to the *lack of support* available from the AFT and the two state federations. The EA has sophisticated negotiations research units that give local bargaining teams justification for their salary and other demands, and that can supply the local with the best contract language existing anywhere on literally hundreds of specific items (such as grievance procedures and layoff clauses). The Association also *trains* its leaders and staff people in the most effective and up-to-date bargaining techniques; and it supplies them with tips and trends in negotiations — promising new areas for contract gains, for example. Lastly, the Association has specialists available to help local teams in everything from budget-analysis to community action programs to generate support for teacher needs.

Neither the AFT nor any of its state affiliates — outside New York — has any programs even remotely comparable. In Springfield, a major reason teacher salaries started dropping when the AFT took over — and in nine years the teachers fell as much as $4,000 behind their colleagues elsewhere — was that the Federation cannot supply budget analysis; as a result, the local had, in four rounds of contract talks, *overlooked* about $5.5 million that had been available for pay hikes.

Mightn't Springfield and Stamford be exceptions?

We would have to add many, many pages to our discussion if we were to list every known example. In brief: No, they're not exceptional in any way. Here are just a few more examples.

- In 1979 the AFT local in Scranton, Pennsylvania, 'overlooked' $641,578 which had just become available in new state aid — an average of $2,631 per teacher, all or much of which would have been available for salary increases.
- Also in 1979, teachers represented by the AFT in South Saint Paul, Minnesota, lost more than $2,880 each — again because neither the AFT nor its Minnesota affiliate knew that additional state monies were on the way.
- In Michigan, early in 1980, teachers in Oak Park voted the Federation out because, as the *MEA Advocate* pointed out:

> Oak Park teachers [had] had Federation representation since 1965, when they first organized for bargaining purposes under the [then] new Michigan law granting that right.
>
> At that time Oak Park teacher salaries were among the highest in Oakland County. Since that time those salaries have fallen to among the lowest.

In all, teachers in 12 school systems voted the Federation out and voted the Association in during the 1979-80 school year. In each case, the reason given was the inadequacy of AFT services in negotiations, legal defense, and other crucial areas.

Didn't teachers in as many NEA locals oust the Association for Federation representation?

Yes; but there's a difference. Teachers today are legitimately frustrated. The state of the economy is cheating them of many of the economic gains they've realized over the past decade; the difficulties of teaching are compounded each year by a variety of social and other factors. The AFT enters a school district with panaceas, with 'pie-in-the-sky' promises. (It *never* delivers on them, of course.) Not having had any previous experience with the AFT, some teachers are taken in and other simply vote their frustrations.

Where they vote the Federation *out*, however, teachers have almost always *had experience with both organizations.* They are in a position to compare. And the objective facts — what happened to salaries in Baltimore, Springfield, Stamford, and elsewhere — confirm the judgment of those teachers who have seen both sides and returned to the Association.

Why is it the Federation's 'services in negotiations, legal defense, and other crucial areas' are either lacking or so greatly inferior?

One reason is the smaller size of the Federation. Even if it put every penny available into serving its teacher-members, it would be unable to match the Association's programs.

Another reason is the Federation's political character. Its 'staff-officer' system means that the AFT exists more to provide goodies for Federation employees who convert themselves into elected leaders than to provide help to teachers. In 1973, for example, the AFT created a program meant to rival NEA's UniServ. Like UniServ it includes rebates to state and local affiliates. In the AFT, however, those rebates are used mostly to supplement the salaries and stipends of staff-officers, whether or not they ever negotiate a contract or process a grievance.

The most important reason, however, is the AFT's commitment to organizing non-school workers. [See separate chapter on that subject.] Though it remains much smaller than the NEA, and though it continues to put a great portion of its resources into political rewards, the AFT is large enough now to provide a decent level of support services. It *chooses* not to, because its staff-officer's priorities lie elsewhere.

Though NEA and AFT may have become 'militant' about the same time and for the same reasons, isn't it true that AFT remains *more militant* — more likely to go on strike, for example?

Again, judge for yourself. During the first half of the 1979-80 school year — that is, through January 16, 1980 — 250 locals of public school teachers had gone on strike. Of that total, 177 were NEA locals; and that figure is just under 1.5 percent of NEA's 11,941 local associations. The other 28 strikes were conducted by AFT locals; and 28 is also just under 1.5 percent of the AFT's 1,914 locals. [Seven locals of the American Association of University Professors had also mounted strikes during the period covered.]

The key point is that neither NEA nor AFT makes a local 'militant' — that is, *teachers themselves* must vote to walk off their jobs: neither NEA nor AFT can 'force' them to go on strike. And a given faculty does not become more or less militant simply because it changes its collective bargaining agent.

Hold on! There are still NEA locals that *refuse even to bargain*, much less to strike. That has got to be proof of something.

It is: It's proof that NEA is a *national* organization and the AFT is a *regional* organization. Teachers in some parts of this vast land are not yet persuaded that collective bargaining is necessary or — at least — that it's the *best* way of protecting teacher rights and making gains in terms and conditions of employment.

If, however, AFT reps cite the reluctance of some NEA locals to bargain as evidence that the Association is 'less militant,' you might point to any one or more of three facts:

- The AFT, too, has affiliates that both reject bargaining and wouldn't consider striking. In New York — of all places! — there are half a dozen AFT locals that refuse even to be certified as exclusive bargaining agents, and which 'meet and confer' rather than negotiate master contracts.
- *Of course*, AFT has relatively fewer such locals. Ninety percent of its members are in the northeastern section of the country (though it's a tiny minority even in the northeast, outside of New York). *Most* occupational groups — not just teachers — are more committed to bargaining and more willing to strike in the northeast than they are in other parts of the country.
- Considering the difference in their geographical spreads, the percentage of NEA locals that strike ought to be *much lower* than the AFT's. If anything, therefore, where NEA locals have embraced collective bargaining, they have made the Association *more militant* than the Federation.

AFT reps have a different answer to that last point. They say NEA locals strike more often — considering the Association's geographical spread and the reluctance of many of its locals to adopt some or all of the elements of collective bargaining — because the Association doesn't know how to negotiate. NEA locals, therefore, *strike unnecessarily*.

That's nonsense. Here are two better reasons why an Association local might *consider* a strike which the Federation would be frightened away from calling.

- NEA and its state associations do a far better job than the AFT and its affiliates in (1) training professional negotiators and (2) providing them with back-up research data. If a school board has hidden money in its budget, an Association negotiator is almost certainly going to find it — with the assistance of NEA Research or a state research unit. A Federation negotiator is likely to overlook hidden funds — because the AFT provides no such help.

  Not only that, but Association negotiators are trained in the most up-to-date techniques: They are more likely to drive a *hard bargain* than their Federation counterparts, who lack such training. Given taxpayers' revolts, the growing sophistication and recalcitrance of school boards and their negotiating teams, and the tight-fistedness of government officials, regular and systematic training is essential — even if it does produce negotiators who are more 'hard-nosed,' and therefore make the *possibility* of strikes somewhat larger.
- NEA and its state associations also maintain a Teacher Assistance Fund, with a line-of-credit in excess of $10 million. It guarantees teachers interest-free loans in the event they are compelled to go on strike. It averages about $2 million a year in such guarantees. NEA members are never compelled to surrender to their school boards because the Association has no means of helping them if they are forced into a job action.

  By contrast, the AFT has only its 'militancy [strike] fund, 60 percent of which has been 'lent' to the Federation's general fund to cover the recurrent deficits it experiences because of such costs as those of organizing non-school workers. As a result, AFT members *are* sometimes compelled to surrender to their school boards rather than stand up for their rights.

Considering the fact that the AFT makes such a big issue of being 'more militant,' it must do a pretty good job of concealing the inadequacy of its legal services program.

It does; but every now and then the truth surfaces. The union's books, of course, are one piece of evidence. Even more interesting are statements like the following [which is taken from the NYSUT-AFT brief, dated February 9, 1978, in the case of *Sharon Jacobs v. Board of Education, East Meadow, New York*]:

> For each and every instance that NYSUT counsel is provided there are literally hundreds of instances wherein litigation is not pursued based on the advice and recommendation of NYSUT counsel.

Another measure of a union's 'militancy' is its commitment to defending its members's rights. Isn't the AFT's record stronger in *that* field at least?

No. And the evidence in support of our denial is abundant and incontrovertible. Some of it will come out, we suspect, in answer to subsequent questions. Let's therefore just cite two pieces of proof here.

- NEA maintains *two* multi-million dollar defense funds to protect its members' professional and civil rights. We've already referred to the Teacher Assistance Fund. In *addition*, NEA's DuShane Fund — together with cooperating programs in its state affiliates — spends over $12 million a year defending teacher rights in some 18,000 individual and class-action suits.

By contrast, AFT's defense fund balance on March 31, 1979, was a mere $20,396, or *less than five cents per member*. During the whole of the 1978-79 school year, the Federation *spent* a mere $383,000 on legal actions of all kinds — or *31 times less* than the Association's total, and more than *seven and one-half times less* than the Association's per-member figure.

As for the AFT's other defense fund — its militancy fund — we've already pointed out that $3,584,190 of the $5,777,171 that was *supposed* to have been in it on March 31, 1979 had been 'lent' to the Federation's general fund for operating purposes.

- New York City's United Federation of Teachers the UFT, is the AFT's flagship and archetypal local. It claims now to enroll 77,000 members (including hospital workers), and collects over $12 million each year in dues; it also has better than $6 million in assets (bank deposits, *etc.*). Since 1976 NEA has had a very small local in New York City: It enrolls fewer than 500 members. But in 1977-78, NEA/New York City spent *almost twice as much* as the UFT defending the rights of New York City teachers in arbitration hearings. NEA's outlay was $16,450; the UFT's was a mere $8,426, or less than 7/100 of one percent (0.00067) of the union's income. One of the many teachers NEA helped won an award of nearly $30,000; she had first asked the UFT for help — as had every one of the others who finally came to NEA — and had been told that her grievance was 'without merit.' That is, the AFT's flagship local had taken the school board's side rather than the teacher's side.

The AFT does like to say that, being part of the 'trade union movement,' it knows better how to *run* strikes.

Again, not true. Though the frequency of strikes suggests that an NEA local is just as likely to go out as an AFT local, AFT strikes tend to be longer, more bitter, and less successful. Individual AFT locals also tend to strike *more times* than AFT locals, indicating they don't really get their message across to their school boards. Both New York City and Chicago, for example, have gone on strike *five times* in little more than a decade.

One reason is that AFT has absolutely no community action programs, and very little by way of public relations. Once a strike has been settled, the AFT can do nothing about the animosities which it — inevitably — engendered. NEA and its state associations do offer services to help locals heal the wounds resulting from a teachers strike.

That's great. Now *show* me that AFT strikes are not the beautifully managed, great victories that prove the Federation knows better how to conduct walkouts.

We were just about to do that when . . . Never mind. Here are just a few.

- We've already mentioned Levittown, New York: 43 days on strike, 86 days' pay lost (and that's 86/180 of a teacher's salary for the entire year), and no pay hike. That happened in 1978. A year earlier the AFT local in Lakeland, New York, went on strike for 34 days — costing its members 68 days' pay — and settled for a mere 5.5 percent pay hike, or one-half of one percent more than it had been offered before walking out.

- The Chicago AFT went on strike early in 1980; its chief demand was that the school board not lay off 1,600 teachers. After the teachers had lost more than *two weeks'* pay, the AFT settled, claiming 'a great victory.' The board had agreed to lay off not 1,600 teachers, but only 1,375. (The strike had, of course, saved the board much more than the salaries of the 225 teachers it agreed to keep on its payroll.)

- In urging New York City teachers to vote for a strike in 1975, the local AFT president — who is also the national AFT president — promised a mass rally at Madison Square Garden that: 'We all go back, or none of us go back!' At least 12,000 teachers had been laid off over the preceding two weeks. Albert Shanker knew full well that a strike was not going to get them rehired; he lied anyway. The strike settlement was virtually identical to the school board's last pre-strike offer. The walkout had achieved nothing, and surely *knowing when* to call a strike is part of knowing how to run one.

- A month after that New York City strike ended, Shanker granted an interview to the *New York Times*. The teachers had lost ten days' pay for their five-day walkout; Shanker, being on the union's payroll rather than the school board's, had not been subject to the two-for-one penalty exacted from public employees; he was nonetheless opposed to the courts imposing any penalty on him. So he told the *Times* that he had been *opposed* to the strike. He had 'lost control' of the union to a bunch of hot-heads, the AFT president said, and he shouldn't be held responsible for what happened. (His disavowal succeeded with the judge, who let Shanker off very lightly — and, moreover, it was *true* that Shanker hadn't favored the walkout — but it is surely the worst cop-out in the history of *any* teacher organization.) The upshot of all that has been to destroy the credibility of any future AFT strike-threat in New York City; and conducting a strike so as to preserve that weapon is surely a part of knowing how to run a strike well.

- We've talked already about the 1979 strikes in San Francisco and neighboring Daly City. Concurrent with those two was an AFT walkout in Oklahoma City. What the Federation did in that strike — with national AFT reps calling the shots — may well take the cake. Here is just a small part of the story:

  - ■ The first two days of the strike were *in-service days*. With no children scheduled to attend, the school board didn't care that the teachers were losing two days' pay; and the administration took advantage of the in-service days' walkout to put scabs in place, juggle busing arrangements, and otherwise neutralize the strike's effect on the first student-attendance day.

  - ■ Negotiations had broken off before the AFT called for its strike vote. The Federation did not give the board an ultimatum — like, 'Return to the bargaining table or else we strike on such-and-such a date.' In fact, it didn' even *ask* the board to resume negotiations until the strike was a week old.

  - ■ One school board member was 'friendly.' The local AFT president held a news conference and revealed publicly what that board member had told him in strict confidence. He both named the board member and disclosed that his 'friend' had secretly tape-recorded board discussions and had permitted the AFT leader to *listen* to the tapes. (The AFT ended up with *no* friend on the board — always the sign of a brilliantly run strike.)

  - ■ The AFT did not even get to the negotiating table — not once during the entire strike. It capitulated, instead, with (1) *no* salary increase, (2) *no* fringe benefit improvements, (3) *no* amnesty [*i.e.*, no-reprisals] agreement, and, in fact, (4) *no contract* at all.

These stories — and many others like them — ought to be told wherever two or more teachers gather. If there is one thing the Federation *doesn't know* how to do, it's run a strike. But, of course, there are many more than one areas of AFT ignorance and incompetence.

You've pointed out that several NEA locals — and at least one AFT local — had negotiated contracts well before New York City's UFT. Is it not true, though, that the first *election* for an exclusive collective bargaining agent was held in New York City and won by the AFT?

Yes. In December 1961 the UFT won bargaining rights by defeating a coalition put together at the last moment and supported by the NEA.

The national AFT's reaction to that December 1961 victory is highly illuminating. Al Shanker tells of flying back to Chicago [where the AFT headquarters were then located] to lay the 'great news' before the Federation's executive council. The council debated for long hours before deciding to *accept* the election results. At that time most AFT leaders objected to collective bargaining and exclusive representation on the grounds that the much larger NEA would win the lion's share of elections and would freeze the AFT out in most of the country.

To what extent was that fear justified?

No one knows what kind of growth the AFT might have registered if the advent of collective bargaining had been pushed back a decade or two. The NEA has, of course, won most of the representational elections between the two organizations. Through the summer of 1979, NEA had defeated AFT 917 times; the AFT had won 420 times; and more than 8,000 NEA locals had been *certified* because there was no AFT competition. (The AFT, of course, benefited from that procedure as well, most notably in New York.)

As proof of the proposition that 'the AFT bargains better,' Federation reps used to point to salaries in New York City. You have pretty well demolished that argument. The Feds still like to talk about salaries in New York *State*, however. Isn't it true that (1) teachers are better paid in New York than anywhere else and that (2) New York is the only state in which the AFT represents a majority of all teachers?

New York's teachers are *not* the nation's best paid. The average salary of 'public school instructional staff' in New York during 1979-80 was $19,200. That is less than the averge in *four* other (and therefore NEA-majority) states. Alaska, at $27,930, was $8,830 ahead of New York; Massachusetts, at $22,500, was $2,900 ahead; Rhode Island, at $20,615, had a $1,015 lead; and California, at $19,770, was $170 ahead of New York. Moreover, all the other states are closing ground on New York. Some had begun to do so before the AFT became the majority organization in that state; the remainder have moved up since that time.

AMERICAN FEDERATION OF TEACHERS

Membership in the American Federation of Teachers increased last year by a net total of 50,000, and the union's 43 national representatives based across the country report they continue to receive more inquiries than the union can accommodate at once.

"I have 18 more requests for organizing help than I can fill at the moment," Chuck Richards, AFT organizing chief, told BNA in an October interview at the union's national headquarters in Washington, D.C. He added that the requests will be met in short order, but they reflect the surging number of demands in the labor field.

He noted that AFT is getting requests, in part, as a result of spinoffs—where teachers near cities that have organized see what the effects have been and then decide they want to look into organizing. Two other factors have greatly helped stimulate the demand for teacher organizing: decreasing numbers of teacher jobs as pupil enrollments decline, and soaring inflation which ravages the buying power of teacher salaries.

Local Autonomy Stressed

Scanning a map of the United States covering a wall in his office, Richards pointed out that the 568,000-member union remains as the predominant bargaining agent in large, metropolitan cities. For the 1980s, he noted that potential membership prospects are healthy in the Sunbelt states of the South where AFT began digging in two years ago.

"Texas today is like it was 15 to 20 years ago in New York City in terms of organizing," he said. "We continue to address the same sort of questions that we were asked in New York when teachers started joining the union in greater numbers."

He said that two commonly asked questions stem from basic misconceptions about what a union is and what AFT's affiliation is to the 14 million-member AFL-CIO. Teachers ask: Would the AFL-CIO show up with a lesson plan for the teachers to follow? What is the relationship between being a professional and belonging to a union?

Richards noted that the basic philosophy of the AFT has always stressed local autonomy.

"That is a very powerful phrase around here," he said. "As corny as that sounds, we believe it. That is our orientation. As far as I am concerned, after all the rhetoric is put aside, including mine, the value that must be determined in the very critical analysis is what the contracts have in them. That is, what is written.

"The result of what we do is to be found in the contracts. This deals with the salaries and professional issues—such as class size and preparation time. The economic pressures we live under today are carrying people to look at the unions."

Aftermath of J. P. Stevens Signing Pact

In addition to the more obvious economic pressures, teachers face external financial difficulties. Voters are turning down referenda for tax millage hikes in many school districts. There is also a move in the White House to balance the federal budget.

And with the national economy inching toward recovering from the most recent recession, many localities are confronted with high rates of unemployment. At the AFT annual convention in August in Detroit, AFT President Albert Shanker warned, "It is very difficult to get increases in state aid to education when you have a high unemployment rate. The state government has to take care of the problem of unemployment" *(GERR 876:19)*.

Richards said that in the Sunbelt states—particularly the southern crescent of the Carolinas, Georgia, Alabama, Louisiana, Mississippi, Arkansas, and Texas—teachers are increasingly receptive to what a teacher union is and what it can accomplish through collective bargaining. With the current economic climate encouraging more and more teacher groups to improve their ways of getting pay hikes to cope with inflation, he said he believes the Sunbelt states will respond like Northeastern states did to the concept of collective bargaining.

"What happened in the Northeast states will happen faster in the Sunbelt states," he predicted.

Richard's assessment is shared by many in the labor organizing field. Just days before the interview with Richards, the major textile firm of J. P. Stevens Co., which successfully resisted unionizing for nearly two decades, finally signed a collective bargaining agreement with the Amalgamated Clothing and Textile Workers Union. The agreement brought to an end one of the longest and most bitter organizational wars in U.S. labor-management relations history. With 160 plants and 44,100 workers, J. P. Stevens Co. had been long a symbol of southern industrys' resistance to unionism. Many of the tactics the firm used to keep its workers from joining unions were declared illegal by the National Labor Relations Board and the federal courts.

Many labor officials have said that the settlement could be seen as a beginning of a breakthrough in organizing labor in the South.

Professionalism and the Union

Richards said that being a professional and a union member are in harmony with one another. The case of vocational teachers helps underscore that point. He said that vocational teachers are some of the most difficult to organize.

"You know why? Think about it." He paused. "The faculty in a vocational school frequently has a background with the building trades and went to college nights to get his or her degree to become a teacher. They worked all day and then went nights to classes, busting their tail to get their degree.

"When they got their degree, they thought, 'Now I'm a professional. I don't have to be in a union.'

"Then after they start teaching they discover the problems they had as a tradesworker are no different than when they become a teacher. There's a period of disillusionment. They find they have to join a union if they are going to get anywhere. It's a sad commentary on the labor situation that exists today.

"But they join. And when they do they become our most loyal members."

As far as collective bargaining goes, Richards pointed out that teachers—as public sector workers—are in a unique spot. "Wherever we go, we rely upon management to pass laws that say we can bargain with management. It is government that must pass the laws. And some of these laws are heavily weighted in management's favor."

Since Wisconsin became the first state to pass collective bargaining rights for city workers in 1959, about 31 more states passed similar legislation, although not all those states passed uniform statutes. Some states provide for collective bargaining that covers police and fire fighters. About 18 states have no collective bargaining rights for city workers.

NEA Rivalry

On the subject of legislation, Richards mentioned AFT's longstanding rivalry with the National Education Association. NEA is "willing to take a [state bargaining] law at any price as long as it permits them to be the exclusive bargaining agent," Richards asserted, adding, "This doesn't necessarily help them bargain effectively just because there's a law passed."

He hastened to clarify, however, that he doesn't see NEA as an enemy. "The enemy is those people who don't understand the wisdom of freedom of education." This includes people espousing tuition tax credit and the voucher system.

The possibility of a merger with NEA and AFT still remains a possibility, he indicated. "The merger remains a major goal of ours. It just makes sense. If we merged, we would have membership that would be on every voting bloc in the nation. This would help us work better toward continuing to improve the quality of what we can do for the kids of this country."

Four Major Responsibilities

As a public school teacher from 1963 to 1967 in the Woodbridge, N.J., school system, and a labor worker since then, Richards drew from his background to list four major responsibilities of a union organizer. These are: (1) knowing how to bargain for a contract; (2; knowing how to run a strike; (3) knowing how to administrate a collective bargaining election; and (4) having an instinct for organizing.

AFT's success with organizing teachers has spawned more organizing success—health care employees. In 1979, AFT moved to include health care workers. Speaking before the annual convention in San Francisco in July, 1979, AFT President Shanker said the teachers union will have to take in other organizations to strengthen their union at the polls and on the picket lines. If the union didn't, he said, declining student enrollments and attendant decreasing teacher jobs could lead to the union growing smaller and politically weaker while the problems they face grow more difficult *(GERR 819:19)*. His speech helped accent the convention's slogan, "A million or more by 1984."

At this year's convention, delegates followed up on this by voting overwhelmingly to adopt constitutional amendments that grant recognition to health-care workers *(GERR 877:17)*. One section added to the constitution states that a goal of the AFT is to improve the standards for registered nurses, allied health professionals, and other health-care employees. Another amendment adds, "nurses, allied health professionals, other health-care employees" after "school teachers, education workers" in the membership section of the constitution.

"We didn't seek out health-care workers," Richards explained. "We had been receiving inquiries from health care workers, especially nurses, for some time." Today AFT has about 30,000 health care workers, including licensed practical nurses (LPNs), registered nurses (RNs), and technicians.

The two groups—teachers and health care workers—present an ironic contrast, since the teacher numbers are dwindling and health care numbers are still increasing.

Organizing Beyond Teachers

With AFT's organization goal of topping the million mark by 1984, the union has committed itself to further organization modifications. For in addition to including health care workers, the union has moved to represent state workers. AFT is challenging the incumbent Connecticut State Employees Association (CSEA) in representing state workers in that state in four-way representation elections this autumn *(GERR 879:28)*. And this past summer, AFT won the right to represent about 31,000 New Jersey state employees *(GERR 871:22)*.

In the New Jersey election, AFT defeated the American Federation of State, County, and Municipal Employees (AFSCME) and the New Jersey State Employees Association. Balloting was conducted in June; election results were certified July 7 by the American Arbitration Association. An earlier election in May was ruled inconclusive *(GERR 862:24)*.

Out in Texas, the union this spring granted an official charter to the University of Texas Employees Union Local 3626 which is launching a drive to organize a potential 45,000 nonteaching employees at the statewide university system *(GERR 851:30)*.

But difficulties continue to arise Worse than the decreasing number of teacher jobs attributed to declining pupil enrollments are school districts throwing hundreds of teachers out of work in order to make up for budget deficits. AFT affiliates in New York City, Washington, D.C., and Detroit let more than 3,000 teachers go this fall to save money and prevent budget difficulties (*GERR 879:17*).

And in Texas, the state AFT office caught fire around the Labor Day Holiday, Richards said. The fire destroyed valuable records, but Richards pledges that the setback won't deter organizing drives in Texas. He said, "Teachers still need so much more done in their behalf."

Following is AFT organizing literature.

AFT ORGANIZING LITERATURE

QUESTIONS AND ANSWERS ON AFFILIATING WITH THE AFT

Q. What difference does our national union affiliation make in terms of what matters most to us in Cranston—our contract?

A. We can't say that the contract would be radically different or that we would make twice as much pay with AFT affiliation, but we can say for certain that AFT and the R.I. Federation would provide the best bargaining assistance available. R.I.F.T. President Ed McElroy has agreed to negotiate our next contract personally.

Q. What else does the AFT offer us besides negotiations assistance?

A. First, AFT affiliation would increase our ability to get what we need from the state legislature, since AFT's legislative agenda is backed by the state AFL-CIO which is headed by Ed McElroy. Second, switching to AFT would align our organization with the state's other urban teachers in Providence and Warwick rather than keeping us in the status of "big fish in a small pond" as we are in NEA/RI. Third, our local would stand to gain almost $40,000 per year *without an increase in dues* if we change our affiliation to AFT and R.I.F.T.

Q. What accounts for the big savings?

A. Right now, the local only keeps $38 of the $176 annual dues it charges members. The rest goes to the state and national NEA. Combined state and national dues for AFT, on the other hand, total only $92. So with the same annual dues, we would retain $84 per member for local needs rather than the $38 we now keep under NEA—a $37,000 savings multiplied times our membership.

Q. But why would we need so much money in the local treasury?

A. There are many instances in which it's important for the local to have its own resources. Legal defense of members and arbitration cases are two major examples. Right now, we're dependent on NEA/RI for legal help and for arbitrations—*they* tell *us* how *our money* will be spent—whereas with AFT we'd have the flexibility to hire our own attorneys and carry on our own affairs. Having control over how dues money is spent is related to the issue of local autonomy, which is the central issue in the whole question of affiliation.

Q. Why is local autonomy the big issue?

A. Because in NEA/RI, Cranston is short-changed and underrepresented, and there's not a thing we can do about it. Despite the fact that we are the biggest NEA local in the state and supply 17 percent of the NEA/RI budget, we have only *one seat* on the state board of directors—fewer than relatively small districts like Portsmouth. When we asked for more representation on the board, we were rebuffed by the NEA/RI leadership. In addition, we were informed that our representative on the board of directors is expected to speak *not* for Cranston but for the state as a whole, a concept which violates the whole idea of representative government.

AFT operates far differently. In the AFT structure, the *local* is the most important unit, not the state federation. The state federation's role is to *assist* the local, not to do *for* the local the things which the local can and should do for itself. Both the AFT and the R.I.F.T. constitutions guarantee the local voting strength in policy bodies which reflects the local's membership. AFT stands for democracy and local self-reliance rather than state domination and local dependence.

Q. Exactly how does AFT promote local self-reliance?

A. AFT has developed a comprehensive Staff and Leadership Development Program whose purpose is to train building representatives and local oficers in all phases of union work including bargaining, strikes and action programs, grievance representation, publications/public relations, political action, etc. The result of this training is a tougher, stronger, more self-reliant local union.

Q. What about insurance? How well do AFT's insurance plans compare to NEA's?

A. The insurance packages and member benefits are virtually identical. One significant difference, however, is that AFT's professional liability insurance covers failure-to-teach (malpractice) cases, whereas NEA's doesn't.

Q. So far, AFT sounds like a better deal, but I'm concerned about the "union label." Isn't NEA a more professional organization for teachers to belong to?

A. Nothing could be farther from the truth! *Both* organizations are unions, first of all, despite the word "association' in NEA's name. Both the IRS and the U.S. Department of Labor have ruled that NEA is a union and must comply with all U.S. labor laws. If anything, NEA is more militant than AFT these days, having conducted over six times as many strikes last year than AFT. As for "professionalism," NEA continues to get the credit for enhancing professional standards, whereas AFT delivers the meat-and-potatoes. Independent research has found AFT contracts cover more professional concerns than do NEA's; in addition, AFT research reports on such issues as student testing, bilingual education, mainstreaming of handicapped pupils and other important topics are consistently more relevant, timely and just plain *useful* than anything produced by NEA. Finally, AFT's regular publications—*American Teacher* and *American Educator*—have won every award in their field for both content and appearance.

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Q. But NEA says that AFT hardly even cares about teachers any more—that it's putting all its resources into organizing other groups of employees. Is this true?

A. It *is* true that AFT is reaching out to new jurisdictions, including health care professionals and white-collar civil servants, but the added strength coming from these new members *increases* AFT's abilitites to represent teachers. Cranston teachers will very likely be hearing all kinds of wild stories about AFT from NEA reps who are determined to block Cranston's switch to AFT. NEA likes to say, for instance, that AFT President Al Shanker is a tyrant and a racist; that staff members dominate the decision-making in AFT; that AFT has no money to provide legal defense for its members; that AFT joined forces with the Right Wing to block the establishment of the new Education Department; that AFT's affiliation with the AFL-CIO *hurts* rather than helps teachers and education, etc., etc. But then, NEA *used* to say that collective bargaining was bad for teachers. The lies change over the years, but the habit of lying remains the same. The question *you* should ask is, if everything NEA says about the AFT is true, why do teachers continue to turn to AFT across the country and why did NEA, according to its own financial report, *lose* members in 35 out of 50 states during the 1979-80 school year?

Q. One last question. Is the switch to AFT taking place according to proper and legal procedures, or are we being rushed into this for any particular reason?

A. We are making absolutely sure that proper procedures are followed. For example, the Executive Board *could* have changed our affiliation all by itself, without ratification by the membership. Instead, the Board waived this prerogative under the constitution and voted to place the issue squarely before the members for a secret ballot vote. The affiliation change in no way jeopardizes our legal relationship to the school committee, since the recognition clause of our contract refers to the *local* association, not to the state and national NEA. As for any "hidden agenda" in the switch, it should be pointed out that the CTA's officers can only *lose* money by supporting it. President Dennis Neri, for example, currently receives $1.50 per member year as a stipend from NEA/RI; this subsidy will disappear when we affiliate with AFT and R.I.F.T.

GOOD REASONS WHY CMEA SHOULD AFFILIATE WITH AFT

Q. Why should the CMEA affiliate with any union, let alone AFT?

A. In an era of hard times for municipal employees, small independent unions like CMEA simply cannot afford the economic research, the legal fees and the communications expenses which go into bargaining and administering a good contract. Also, on the theory that a public employee union's ability to win good contracts is only as good as its ability to exercise political muscle. CMEA cannot function effectively for its members without a big union's help in shaping a political action program.

Q. OK, so we need to be affiliated with a big union. Why AFT?

A. Because AFT is the fastest growing, most democratic union in the AFL-CIO and because it already represents some 12,000 teachers and paraprofessionals in Baltimore City school. By joining forces with the AFT in Baltimore, we would have a solid bloc of 20,000 city workers all affiliated with the same union to deal with Mayor Schaefer from a position of strength.

Q. What exactly is AFT promising to do for us if we decide to affiliate with them?

A. First, AFT will lend its full resources and support to CMEA's battle to prevent or minimize layoffs. Second, AFT will assign one of its National Representatives to work with CMEA for a period of one year following affiliation. This assignment will involve helping CMEA leaders and staff develop capabilities in such areas as negotiations, political action, communications and grievance handling. Third, AFT will assign additional staff as needed to carry out CMEA programs for upgrading working conditions, strengthening seniority rights, expediting reclassifications and processing grievances. Fourth, AFT will offer training opportunities to CMEA representatives at its Staff and Leadership College in Silver Spring, MD. Fifth, AFT will make available its full range of supplemental programs and benefits to CMEA's members. The AFT member benefits package includes low-cost group insurance, significant discounts on travel and auto rental, professional liability insurance and access to AFT's Legal Defense Fund for job-related legal problems.

Q. But isn't the AFT primarily a teachers union? Why should we get involved with teachers?

A. AFT's main membership base is teachers and other education personnel, but since 1977 the union has been organizing in new jurisdictions including health care and state and municipal employment. In the future, the AFT will probably establish separate departments for K-12 teachers, college professors, nurses and health care workers, state employees and municipal employees. But in the meantime, CMEA members need not worry about teachers telling them what to do or how to do it: CMEA will be a *separate local* of AFT with its own officers and decision-making process. The only difference is that CMEA will be powerfully assisted in bargaining and lobbying by a union which has demonstrated its expertise in the public sector.

Q. You say CMEA will be a separate local of the AFT, but won't AFT still control us?

A. No. One of the unique aspects of the AFT is the concept of *local autonomy*. Locals establish their own dues, elect their own officers, hire their own staff, make their own decisions on contract demands and job actions and engage in political activity according to their own principles and without interference from the national union. Under the AFT constitution, the national union. Under the AFT constitution, the national union has no power to place locals under trusteeship in the event that the national doesn't like what the local is doing.

Q. What about dues? How much will all of this cost us?

A. There will be no CMEA dues increase during 1980, but CMEA will share the dues collected with AFT so that AFT can cover the cost of affiliating CMEA with the local, state and national AFL-CIO. Beginning in 1981, dues to AFT would be $2.83 per member per month or one-half the dues paid by other AFT members. In September, 1983, AFT dues would rise to $4.25 per month or three-fourths of regular dues. After September, 1984, CMEA members would pay full per capita dues to AFT. Local dues would have to be set at requirements plus fund local programs.

Q. That still sounds like a lot of money. Is it worth it?

A. Yes. Numerous studies have shown that union dues are a good investment in terms of the improved wages and fringe benefits negotiated by the union. Generally speaking, you get what you pay for in union representation: low-dues operations tend to be weak and ineffective for obvious reasons.

Q. Tell us a little more about AFT. What's its history?

A. AFT was founded in 1912 by a group of Chicago elementary teachers who were outraged by the failure of Chicago's businesses and banks to pay their property taxes in support of schools. The Chicago group plus some other locals received a charter from the American Federation of Labor in 1916 and became the American Federation of Teachers. With the advent of collective bargaining for teachers, AFT grew rapidly from fewer than 100,000 members in 1960 to over 550,000 members today. Recognizing that a large, diverse union could be more effective for its members than a smaller, one-constituency union, the 1977 AFT convention authorized expansion of membership to include health care professionals and state and municipal employees.

IN FOCUS

WFT POSITIONS ON ISSUES THAT MATTER MOST

4

OF DIGNITY AND DOLLARS

Teachers are professionals, but it's been apparent for decades that without union power, we will never be compensated at a level which reflects our professionalism and commitment.

In Wichita, teachers have witnessed a steady and dramatic decline in purchasing power over the past several years. The decline is evident in the great numbers of people leaving the profession and working second jobs to support their families. Starting from a level which was *already too low*, Wichita teachers have suffered over a 10 percent drop in purchasing power over the past 5 years.

The WFT believes that teachers should not have to leave teaching in order to enjoy a decent living standard, nor should we be forced to work nights and weekends in order to make ends meet. Dollars are not the basis of personal and professional dignity, but dollars *do* count.

The Wichita Federation of Teachers is committed to raising the salaries of teachers to a professional level through the collective bargaining process. We will seek an equitable across-the-board increase as well as a Cost-of-Living Adjustment (COLA) clause as protection against spiraling inflation. This has been a central concern of teachers in this city, and we give you our pledge to address it in a meaningful way at the bargaining table.

...it's time for a change!

VOTE ☒ WFT

WICHITA FEDERATION OF TEACHERS, LOCAL 725
530 EAST HARRY
WICHITA, KANSAS 67211
262-0643

IN FOCUS

WFT POSITIONS ON ISSUES THAT MATTER MOST

SCOPE OF BARGAINING: THE WFT APPROACH

One of the main problems of the Kansas Collective Negotiations Act is that it seriously limits the scope of bargaining. Numerous matters which greatly concern educators have been taken out of the scope of *mandatory* bargaining, and few school boards have been willing to negotiate over issues on which they're not forced to negotiate.

To compound this frustrating situation, Kansas courts have further limited baraining scope by allowing local school boards to remove such matters as teacher evaluation, class size and transfer rights from the bargaining table.

It is the position of the Wichita Federation of Teachers and the American Federation of Teachers that *everything* is bargainable and that particularly such concerns as class size, evaluation and transfer — concerns which directly impact teachers' professional lives — should be *negotiated* rather than dictated by school management.

We contend that these and other matters can once again be addressed in the Wichita contract, and as your bargaining agent, we intend to address them. The courts have merely held that school boards are not required to bargain on certain issues, such as class size, evaluation and transfer.

As a responsible and community-supported bargaining agent, the WFT will negotiate and enforce provisions on class size, evaluations and transfer policy which will begin to ease some of the frustrations experienced by Wichita teachers.

... it's time for a change!

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30

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IN FOCUS

WFT POSITIONS ON ISSUES THAT MATTER MOST

AFFILIATION: THE LABOR MOVEMENT HOLDS THE CARDS

As Proposition 13, the minimum competency movement and other recent developments have shown, state and national lobbying is crucial to teachers' welfare, since what is negotiated locally can easily be taken away in the legislature without an effective lobbying program.

In this context, the WFT's AFL-CIO ties cannot be over-emphasized. Through our affiliation with the 100,000-member Kansas State Federation of Labor, we have access to an established and well-repected lobbying team in Topeka. Further, this affiliation gives us a communications link with some 200,000 voters all over Kansas who have a direct interest in quality education.

As an example of the state labor federation's commitment to our needs, the WFT already has commitment from the federation to make a major priority of revising the regressive Collective Negotiations Act which severely limits the scope of teacher bargaining. Spearheading the WFT-labor effort in this and other fights will be the WFT president who is registered as a lobbyist in Topeka.

Nationally, AFT's affiliation with the 14-million-member AFL-CIO means that AFT's legislative agenda enjoys far better chances of enactment than that of the isolated NEA. Because of labor's backing, AFT successfully lobbied for the new concentration grant feature of Title I which funnels a half-billion new dollars into districts with high numbers of disadvantaged pupils; similarly, AFT fought successfully for greater participation of school systems in the Comprehensive Employment and Training Act (CETA) and for more money for bilingual education and education of the handicapped.

Teachers by themselves constitute a major "interest group" in political life, but in an era of declining enrollments and intense competition for scarce resources, it is the united labor movement which really holds the cards.

Affiliation or isolation: you decide.

...it's time for a change!

VOTE ☒ WFT

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WFT POSITIONS ON ISSUES THAT MATTER MOST

VOTE AS IF YOUR LIFE DEPENDED ON IT — IT DOES!

The Kansas Collective Negotiations Act has a unique feature which gives our local school board *two* chances to run the schools without the benefit of union input. The law requires that an organization must receive a majority of all teachers *in the district* — not just those voting — in order to become the bargaining agent for teachers.

There will be three choices on the ballot in the upcoming representation election: NEA-Wichita, No Representative, and the Wichita Federation of Teachers. If none of these choices achieves a vote total equal to a majority of all teachers, there will be a runoff election between the top two choices. If a majority is not reached in the runoff, the school board wins by default, since teachers will have no legal representative.

In this scenario, teacher *apathy* equals board rule. Teachers who don't vote are actually voting for the board.

The WFT believes that teachers will rally around an effective bargaining agent and give WFT a mandate to bargain in the first election. The current bargaining agent has frittered away teacher goodwill and support, so that it currently enrolls only one-third of Wichita's teachers as members. Nevertheless, WFT believes that *your professional future* is too important to jeopardize by failing to vote and risking the chance of no representation.

Protect your right to effective representation — VOTE!

...it's time for a change!

VOTE ☒ WFT

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IN FOCUS

WFT POSITIONS ON ISSUES THAT MATTER MOST

COMMUNITY SUPPORT FOR QUALITY EDUCATION: THE ALL-IMPORTANT ALLIANCES

One of the things that makes teaching so frustrating today is the often-heard theme that "the public doesn't care" or "politicians aren't interested" in the problems of the schools.

In Wichita, the isolation and ineffectiveness of teachers working by themselves to change things became obvious during recent contract talks. It was a painful and humiliating experience that no one wants to repeat.

How then to build needed bridges to the wider community? The Wichita Federation of Teachers has an *automatic* tie to the sources of power and influence by virtue of its affiliation with the 15,000-member Wichita Labor Federation.

The WFT is already one of the largest local unions in the Labor Federation, and if teachers elect the WFT as their bargaining agent, the Wichita labor movement is bound to take an active interest in teachers and the schools. Not only will labor backing add clout to the WFT's bargaining demands, but labor solidarity will make the winning difference in the event that the school board chooses to force a confrontation rather than negotiate in good faith. It just makes good sense for teachers to be a part of the labor movement: After all, union members are the taxpayers who pick up the tab and the parents of the children we seek to teach.

In addition to working with organized labor, the WFT is reaching out in other ways to the larger community. The WFT's Community Action Committee, for example, is forming a city-wide coalition on class size to investigate the relationship between smaller classes and educational achievement. This coalition will be vitally important in the fight to regain class size language in our contract.

The point of the WFT's community alliances is simple: *teachers can't do it by themselves.* Teachers need friends, and that's what labor affiliation and community outreach add up to — friends you can count on.

...it's time for a change!

VOTE ☒ WFT

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IN FOCUS

WFT POSITIONS ON ISSUES THAT MATTER MOST

COMMUNICATION AND PARTICIPATION: KEYS TO UNION EFFECTIVENESS

The Wichita Federation of Teachers and the American Federation of Teachers have been far more effective than their NEA counterparts in large measure because we *take our members more seriously than does NEA.*

Too often a teachers' organization behaves exactly like school management in terms of secretiveness and bureaucracy. Everything must be done "through proper channels" and with due respect for the bureaucratic pecking order. The result is that the rank-and-file members stay uninformed and uninspired to take an active part in organizational functions.

The WFT does everything posssible to generate a high level of membership involvement and decision-making. WFT's top executive officer, the union president, is elected by all the members and accountable to the entire membership. All meetings are open and all important decisions on such matters as dues, policies, composition of the bargaining team, etc., are in the hands of the general membership.

AFT's motto, coined by famed educator John Dewey, is "Education for Democracy, Democracy in Education." For AFT, those words have always represented a challenge to be taken seriously.

In the Wichita Federation of Teachers:

- **decisions are hammered out by consensus and unity, not handed down from on high;**
- **"mass" meetings are truly mass meetings, not convocations of the faithful;**
- **members know what's going on at all times.**

It's your organization and you should control it.

...it's time for a change!

VOTE ☒ WFT

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CHANGE IS IN THE AIR

- 60 percent of APS teachers were dissatisfied enough to sign ATF's card calling for an election
- ATF's membership jumped from 250 to 1200 in just four months
- In the first three weeks of school, over 300 teachers dropped their ACTA membership

APS TEACHERS WANT *POSITIVE* CHANGE!

On Oct. 11, *YOU* will make the difference.

Professionals make the difference.

Albuquerque Teachers Federation
Local 1420, AFT, AFL-CIO
601 San Pedro, NE · Suite 202
Albuquerque, NM 87108

AFT

TWILIGHT ZONE

PN LIVES ON IN BORDER STATES In case anyone forgot, "PN" stands for Professional Negotiations, the halfway house to collective bargaining that NEA conceived in the late 1960s. Two years ago, Tennessee got a PN law which mandated the inclusion of supervisors in teacher bargaining units and pegged the number of management personnel who could be *excluded* from the unit to pupil enrollment in the district. After the law's enactment, the TEA exec-sec justified this peculiar arrangement with the statement that "both groups are, first of all, employees; specific job assignments are secondary." Now Kentucky has followed suit with a PN bill introduced in the General Assembly by Gov. John Y. Brown, the Kentucky Fried Chicken mogul and mate of Phyllis George. To assuage any anxiety in the public's mind as to what this bill might portend, the Scott County Education Association submitted to the local newspaper a guest editorial which declared:

> The Kentucky Education Association...is a professional organization with membership open to all educators, much like the American Medical Association with its membership open to doctors. There has been a KEA and an NEA for nearly a half century but until now, no one has found that it might benefit their cause to call this organization of professional educators a 'union.
> *(Georgetown, KY, **Times**, 1-17-80)*

The article goes on to assure the public that the PN bill prohibits strikes and that, thankfully, the bill "provides for final authority to lie in the hands of the local board. Neither teachers nor any outsider will dictate to the board. They accept or reject any proposal of their own accord."

The NEA brass in Washington say they review all bargaining bills submitted by their state affiliates. Does the Kentucky bill fulfill what NEA Counsel Bob Chanin calls "minimum standards" for teacher bargaining?

MORE ON THE PURITY ISSUE The NEA has predictably used the AFT's decision to organize in new jurisdictions as an opportunity to brand AFT "the un-school union." The suggestion is that AFT can no longer represent teachers effectively because it is spending all its resources going after health professionals and other non-teacher employees. But imitation remains the highest form of flattery, and it turns out the NEA affiliates all over the country are making their own moves into new territory. We've already reported on the Michigan EA's attempts to raid state employee units currently represented by AFL-CIO affiliates. Recent reports from Minnesota indicate that that state's EA is preparing to do the same thing under the guise of "protecting" the state education employees it already represents. As reported in the St. Paul **Pioneer Press**, the MEA's move into state units is part of a coalition effort with Teamsters Local 320 and an independent State Patrol group. The coalition calls itself the Minnesota Alliance of United Labor! In Washington State, the EA also runs a non-teacher division called the Classified Public Employees Association.

As for health care specifically, there's no doubt that NEA is taking an *exceptional* interest in what AFT/FNHP is attempting to do. When the collective bargaining wing of the Rhode Island State Nurses Association was shopping around for a union affiliation last fall, the R.I. EA was among the organizations making a sales pitch. That nurse group is now the R.I. Federation of Nurses and Health Professionals. And in a recent organizing drive by an independent health care union at a Marshfield, WI, hospital, hospital management charged that the effort was being bankrolled with a $35,000 "loan" from the Wisconsin EA. While the independent union denied getting help from the EA, its spokesman admitted that the EA was "one of a half

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ONE

LOCAL AUTONOMY IN THE AFT
You Control Your Union

The tradition of local autonomy within the AFT is one of the union's proudest boasts. While most unions, including AFSCME, have constitutional provisions permitting the parent union to direct the activities of its locals and/or force compliance with national union policies, the AFT constitution is free of such language. In addition, no AFT local or state federation can be placed under trusteeship (or "administratorship" as AFSCME terms it) for failing to do the national union's wishes.

In simpler terms, this means that when SEA affiliates and receives a charter from the AFT, **the power to make decisions will stay with SEA in New Jersey.**

Some examples of the importance of local autonomy:

DUES

Provided you maintain your AFT affiliation by transmitting minimum per capita dues, the dues level you establish for SEA is up to you—AFT won't tell SEA how much money it should raise and spend for its own operations.

POLITICAL ENDORSEMENTS

AFT locals endorse and support **their own candidates** for local, state and national office. The national AFT endorses candidates for national office, but its endorsements rarely conflict with state and local choices and do not supersede the latter in any case.

HARASSMENT

Your AFT local or state federation cannot be harassed or punished for supporting the "wrong" candidate or candidates for internal AFT offices. In other unions, failing to support the party in power can sometimes result in cuts in assistance and services or even in unwelcome audits and other harassment of the local.

AFT

IT MAKES SENSE.
IT WORKS.

A [illegible]
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advantages of
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with the
[illegible]
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AFL-CIO

TWO

POLITICAL ACTION
COPE Holds the Cards and AFT Holds the Key

In today's world of scarce public resources, no public employee union can survive without a highly organized political action program. Politics has become an extension of collective bargaining: a union can make no real progress at the bargaining table unless it has the votes to obtain funding from the legislature or local government body.

In New Jersey, politics from the governor's mansion on down is a highly developed, highly sophisticated process. All the people who **oppose** state spending programs and public employee unions are well-represented. Leading the fight to **defend** unions and their interests (as well as the interests of consumers and people in need) is the N.J. AFL-CIO's Committee on Political Education (COPE). COPE is a coordinated, computerized effort by AFL-CIO unions to inform members of issues affecting them and to generate money and support for pro-union candidates.

A major consideration in SEA's decision to affiliate with a national union should be access to and participation in the state-level COPE effort. COPE participation can potentially double or triple SEA's political influence. Unfortunately, New Jersey AFSCME is not affiliated with the AFL-CIO in N.J. and thus does not participate in COPE or in the labor federation's Public Employee Committee, a group which presses for public employee legislation in Trenton.

In short, AFT affiliation gives you the political and legislative clout you need. AFSCME affiliation does not, since AFSCME prefers to play its own political game outside of the AFL-CIO. You decide which is best for you.

IT MAKES SENSE.
IT WORKS.

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THREE

ECONOMIC RESEARCH
AFT Has the Expertise

How do you bargain with an employer who says he's broke and manipulates the media to make your union appear greedy and irresponsible?

That's the dilemma faced by public employee unions today as budgets are slashed and Proposition 13-inspired movements spread across the country. Winning a decent settlement for public employees has never been tougher.

Fortunately, the AFT anticipated the dilemma and equipped its Department of Economic Research to provide critically needed research capability for the use of affiliates.

AFT's economics experts can assist SEA in the following areas:

BUDGET ANALYSIS
AFT's professional staff can take apart the state budget item by item, projecting revenues and outlays and identifying federal funding sources which the state itself may not be aware of.

USE OF ECONOMIC DATA
The AFT Economic Research team conducts workshops for affiliates' bargaining teams on the use of the Consumer Price Index (CPI) and other economic indicators in developing contract proposals.

TAX STRUCTURE ANALYSIS
AFT has prepared materials interpreting the impetus behind the tax-limitation movement and linking the movement to a regressive tax structure in most states. These materials are invaluable to public sector unions such as SEA which seek progressive tax reforms.

SEA can do the job of representation which its members expect it to do, but only if SEA becomes as sophisticated as the State of New Jersey in understanding where the money comes from and where it goes. That's where AFT comes in.

**IT MAKES SENSE.
IT WORKS.**

A series of
four papers
on the major
advantages of
SEA affiliation
with the
American
Federation
of Teachers,
AFL-CIO

FOUR

COMMUNICATIONS
AFT Tailors Programs To Meet Your Needs

In an electronic age, interest groups can't get their messages across without some familiarity with the world of mass media. Even a group's **own members** won't identify with the organization in the absence of a first-rate internal and external communications program.

In New Jersey, SEA needs help in winning support for its programs and demands because the public simply doesn't understand the contributions which SEA members make to the state's economy. Citizens tend to perceive state employees as a drag on the economy rather than as a productive, vital force in making New Jersey a desirable place for businesses to locate.

AFT can help turn these perceptions around through a carefully planned and budgeted program of public relations. AFT's public relations and publications staffs understand how the media work and how an organization like SEA can take advantage of numerous **free** publicity opportunities as well as paid advertising. AFT also stands ready to assist SEA in expanding and strengthening internal publications at the chapter and state level.

AFT speaks your language and helps you translate it for the outside world. It's a service you can't do without.

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STAFF AND LEADERSHIP TRAINING

AFT Offers a Traveling College

The heart of every effective organization is people, and unions are no exception. To do its job in an increasingly hostile public environment, SEA needs the most expert and highly trained leaders and staff employees it can get.

Since 1975, the AFT has been assembling a Staff and Leadership Development Program which is unique among American unions. The program now has twenty-five units of instruction available for locals, groups of locals and state federations. Units vary in length from one-half day to three days, and each unit is subdivided into sessions ranging from one-half hour to four hours, thus allowing for maximum flexibility in scheduling.

The theory of the AFT program is "train the trainer," meaning that state-level leaders and staff are put through an intensive course at the George Meany Center for Labor Studies in Silver Spring, MD, so that they in turn can lead workshops within their home state. In addition, AFT staff members are available to lead on-site workshops at the request and direction of large groups such as SEA.

Topics of study include governance and administration of local unions, internal communications, membership recruitment, preparation for bargaining, negotiations, grievances and arbitrations, lobbying, history of the labor movement, strikes and action programs, budget analysis and steward skill development. Role-playing and other participatory techniques are used to make the training sessions as stimulating and realistic as possible.

Training: it's the future of unionism, and AFT is leading the way.

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CITIZEN-LABOR COALITIONS
AFT Provides the Access

The AFT is a founding member and leading spirit in the AFL-CIO's Public Employee Department (PED) which now comprises 33 national unions with a combined membership of over two million. The PED's role is to coordinate public employee interests and activities within and without the labor movement. Some 70 Public Employee Committees supplement and parallel PED's functions at the state and local levels.

The passage of Proposition 13 in California in June of 1978 spurred PED into a massive effort to counter similar tax-slashing movements around the country. With PED and the AFT providing most of the impetus, a coalition of labor and consumer groups called Citizens for Tax Justice was formed in February, 1979. Operating with the full support of the AFL-CIO, Citizens for Tax Justice has generated the best available research on the tax limitation movement and has developed action plans to channel the swelling tax revolt in the direction of progressive tax reform. In addition, the coalition has targeted special activities for states which will face Proposition 13-type referendums in 1980.

New Jersey is not immune to the anti-tax, anti-public employee virus which first surfaced on the West Coast, and SEA stands to benefit enormously from tapping into the resources of both the Public Employee Department and Citizens for Tax Justice. AFT affiliation would provide precisely this access. AFSCME, on the other hand, is not a part of the PED. Instead, AFSCME runs its own pale imitation of PED with the involvement of groups outside of the labor movement.

Can SEA afford **not** to be in the mainstream of public employee resistance to Howard Jarvis and his many supporters? The decision is up to you.

**IT MAKES SENSE.
IT WORKS.**

COLLECTIVE BARGAINING AND NEGOTIATIONS

BARGAINING UNITS

Significant agency and court decisions defining bargaining unit membership are highlighted below:

► The Connecticut State Board of Labor Relations ruled that the manager of a vocational education center qualified as a bargaining unit member as soon as he was assigned teaching responsibilities. The Hartford School Board was found guilty of an unfair labor practice and ordered to stop negotiating a separate contract with the center manager. (*GERR* 847:21, *Hartford Board of Education and Hartford Federation of Teachers,* No. TPP-4655, Decision No. 1840, Dec. 21, 1979).

► Teacher interns do not share bargaining unit status with professional full-time and part-time teachers because they lack the same "community of interest," the Wisconsin Employment Relations Commission ruled. (*GERR* 877:14, *Arrowhead School District and Arrowhead United Teachers Organization,* No. IV, 24611, MEA-1668, Decision No. 17213-B, June 12, 1980).

► Membership within the bargaining unit turns upon the expectation of continued employment, the Commonwealth Court of Pennsylvania held, affirming a lower court's inclusion of support personnel in a unit represented by the AFT but reversing the inclusion of CETA employees who would be terminated when federal funding ran out. Employees responsible for security of school property with minimal maintenance duties were characterized as "guards" excluded from the bargaining unit by state law. (*Erie County Area Vocational-Technical School v. Pennsylvania Labor Relations Board,* Nos. 1014 and 1155 C.D. 1979, June 27, 1980).

* * * * *

► A school board must negotiate the subcontracting of custodial services which results in net loss of jobs to the bargaining unit following demand by the union, and must cease all subcontracting until negotiations end in agreement of impasse, the Massachusetts Labor Relations Commission held. (*GERR* 839:10, *Franklin School Committee v. American Federation of State, County, and Municipal Employees Council,* No. MUP-3206, July 18, 1979).

► The Tennessee Attorney General issued an advisory opinion ruling that a board of education may suspend negotiations with an incumbent union pending a decertification election after being presented with a decertification petition by asserting its good faith belief that the union no longer represents a majority of the bargaining unit employees. In other advisory opinions, the Attorney General ruled that any changes in salary, benefits, or education policy imposed during negotiations and detrimental to teachers not mandated by changed conditions independent of the bargaining process are suspect as unfair labor practices. (*GERR* 839:15, Nos. 45, 48, and 49, August 21 and Sept. 25, 1979).

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The Hawaii State Teachers Association has entered a petition, over the opposition of the state's Department of Education, before the Hawaii Public Employment Relations Board to extend union membership to part-time and substitute teachers and diagnostic/prescriptive workers in another unit.

* * * * *

A Pennsylvania arbitrator upheld a school district's authority to hire a non bargaining unit member as high school coach after reviewing the applicants' relative qualifications, determining that the district did not bind itself in the contract to fill all professional vacancies with bargaining unit members, and finding no such established past practice. (74 *LA* 627, *In re West Mufflin Area School District and West Mufflin Federation of Teachers,* March 17, 1980).

ELECTION ACTIVITIES

Declaring that it will not censor union election material for misrepresentation, as opposed to threat, coercion or promise of benefits, the Michigan Employment Relations Commission ruled that the Teamsters had had ample opportunity to reply to a misrepresentation in a rival union campaign literature issued the weekend before election implying that the Teamsters would double union dues. (*GERR* 853:26, *City of Detroit and Teamsters Local 214 and Detroit Association of Educational Office Employees and Detroit Federation of Teachers,* No. R 79 B-79, Jan. 21, 1980).

The Michigan Employment Relations commission ruled that changes in organizational structure and procedure undertaken in the guise of a teacher union reaffiliation effectively changed the identity and control of the bargaining agent so as to require a formal election supervised by the commission. (*GERR* 880:25, *L'Anse Creuse Public Schools and Michigan Education Association Local 1,* No. C79 B-47, June 12, 1980).

ROLE OF NEGOTIATORS

School districts and teacher unions can materially advance their respective positions by intelligent strategy and manipulation of the negotiating process.

In the September 1980 issue of the *American School Board Journal,* arbitrator and school board consultant Myron Lieberman advises school boards on utilizing the fact finding procedure to their advantage.

Noting that fact finding reports are traditionally prounion and often make recommendations "abhorrent to the good of school governance," Lieberman reminds school boards that fact finding is in most states only advisory and does not bind either party. The school board should publicize in advance its intent not to be bound by the report, along with statistics showing how many times fact finding recommendations have been rejected throughout the state by both unions and school boards.

According to Lieberman, the union has more credibility to lose by rejecting a fact finder's report that supports the school board and thus may announce its intent to be bound by any report to be issued and attempt to trap the school board into committing itself also. The board should clearly state its refusal to adhere to the report and stick to its guns.

Furthermore, the school board should emphasize the importance of the fact finder's rationale over the result, putting the fact finder on notice to furnish persuasive arguments if it decides against the board. In Lieberman's view, the union is much more dependent on a favorable report than the school board; therefore, the school board does not risk its credibility by downgrading the prestige of the fact finding report. However, the school board should avoid antagonizing the fact finder and should be firm without creating the impression that it is predisposed against the fact finder. *(GERR* 883:14).

CITIZEN INVOLVEMENT

Citizen participation in the teacher bargaining process is on the increase, as evidenced by the following suits brought under sunshine laws.

Sunshine Laws

Following Florida's lead, several states have passed laws requiring that certain aspects of public-school governance, collective bargaining, and finance take place in public. Two state appeals cases deciding disclosure issues under sunshine laws are analyzed below:

► The Supreme Court of Georgia ruled that school boards may meet in unofficial sessions closed to the public either immediately before or after official open meetings to discuss excepted topics enumerated in the Georgia sunshine statute such as investigative activities, deliberations, consultations with counsel and take private election votes to be published despite the state Constitution requiring that all official school board meetings be open to the public and listing no such exceptions. (*Deriso v. Cooper*, Nos. 35983, 35984, April 29, 1980).

► In a nonteacher case, the First Department of the New York Supreme Court upheld a subpoena issued by the New York City Comptroller for the corporate and financial records of a pupil transportation contractor in connection with an audit of the city-wide pupil transportation system on the grounds that the materials sought bore a reasonable relationship to the inquiry, but limited the documents issued to more recent years absent a showing of the need for the earlier documents. (*Parochial Bus System, Inc. v. Goldin*, No. 7686N, April 29, 1980).

Citizen Voting and Public Opinion

Citizens voiced their views on teacher employment issues in the following referendum vote and public opinion poll:

► Challengers of a Connecticut school district contract awarding teachers a 9.86 percent pay increase failed to call out fifteen percent of the voters required to validate a referendum seeking to vacate the contract as too costly. The 10 percent of the electorate who cast ballots approved the teacher contract by two to one. (*GERR* 856:28).

► A majority of those queried in a northern Michigan poll approved of giving teachers and other public employees the right to strike, with the vote running almost even between men and women, and only two age groups within the total—51 to 65 and over 65 year-olds—opposing strikes for public employees. Several measures granting varying degrees of strike rights are currently pending before the Michigan state legislature. (*GERR* 867:32).

Parent Involvement

Parents formed groups to end or avoid teacher strikes in several communities:

► In the incident with perhaps the highest degree of citizen involvement, a Pennsylvania parent group formed to pressure the teacher union and the Greensburg-Salem Board of Education to resolve an almost four-week strike filed an independent injunction in the Westmoreland County Court to end the strike. The court did not order the teachers to cut off the strike but only enforced that portion of the complaint which called for continued negotiations. School district officials disliked the parent group's interference because the district was preparing its own injunction which officials believed had a greater chance of success. A contract settlement was reached following eight days of negotiations under the supervision of the judge.

► The Lexington School for the Deaf in New York City was reportedly the target of a protest in October 1979 by parents and students siding with striking teachers whose state-paid salaries were inadequate because slated to those of a state school for the deaf in upstate New York, with both the state and the Lexington school refusing to pay the teachers the differential in cost of living.

► Parents angered at a continuing teacher strike in Saddle Brook, New Jersey reportedly gathered outside closed school board meetings and waged a sit-in at a public school to pressure a settlement to the strike in October of this year.

► A silent all-night vigil to be held outside the site of teacher-school district negotiations was reportedly planned by a Kentwood, Michigan parent group to promote an end to a 10-day strike of teachers and bus drivers.

► In Sierra Vista, Arizona, a parent group concerned over a teacher strike due to union-school dispute over interpretations of the contract has initiated a school board recall to get the conflicts resolved.

Student Involvement

► The students who had the greatest impact on teacher-school district negotiations were those of Teaneck High School in Teaneck New Jersey, whose student newspaper sponsored a public forum in September 1980 in which district and union officials discussed bargaining snags. The forum was broadcast locally over cable television and credited with helping to prevent a threatened strike.

► By contrast, a few students of the Marana High School in Marana, Arizona were unsuccessful in their efforts in February 1980 to organize an association to support teacher demands which were resolved without a strike.

► In Trenton, New Jersey a teacher strike triggered violence among junior and senior high school students reportedly resulting in the arrest of about 15 pupils for fighting and vandalism.

SCOPE OF NEGOTIATIONS

Contested subjects of collective bargaining gave rise to much litigation over the year.

Mandatory Subjects

Court and agency rulings mandating negotiation of certain topics are listed below:

► The New Jersey Superior Court held that procedural safeguards concerning employee evaluations are mandatorily negotiable, affirming an order of the Public Employment Relations Board and remanding the case for arbitration. (*GERR* 879:20, *Board of Education of the Borough of Fair Lawn v. Fair Lawn Education Association*, 417 A2d 76, June 2, 1980,

► Insurance premiums were ruled a mandatory subject of collective bargaining by the Massachusetts Supreme Court, even where the result might require legislative implementation. (*School Committee of Medford v. Labor Relations Commission*, Mass. Adv. Sh. 1980, p. 687, March 10, 1980).

► The California Court of Appeals ruled that school boards must bargain on proposals affecting salaries for various employee classifications, but are not required to negotiate on salary changes which do not alter the relation of job classifications within an occupational group. (*GERR* 859:24, *Sonoma County Board of Education v. Public Employment Relations Board*, Civ. No. 45339, Feb. 28, 1980).

► Applying the test for proper subject of negotiation as degree of interference with educational policy making, the Massachusetts Supreme Court upheld an arbitrator's decision requiring the Boston School Committee to consult with the teachers union before imposing elementary school final exams. (103 *LRRM* 2303, *School Committee of Boston v. Boston Teachers Union,* May 11, 1979).

► Contracting out of bus services qualifies is a bargaining subject under Minnesota state law as a term or condition of employment, the Minnesota Supreme Court ruled. The court determined that the union did not waive making a claim of unfair labor practice by failing to demand negotiation where it was not given sufficient notice of the decision to contract out. (102 *LRRM* 3004, *General Drivers Union v. Independent School District,* No. 269, Aug. 24, 1979).

► A school district's early retirement program constitutes a topic of mandatory bargaining in the categories of wages or procedures for staff reduction, the Iowa Public Employment Relations Board decided. (*GERR* 854:23, *Fort Dodge Education Association and Fort Dodge Community School District,* No. 1474, Dec. 21, 1979).

► The Oregon Employment Relations Board, noting that matters affecting employment conditions are mandatory bargaining subjects while matters affecting education policy, such as student discipline are permissive, ordered negotiation on union proposals on discipline of students so related to teacher safety that they heavily affected teacher employment conditions. The Board found that fairness procedures giving teachers notice and opportunity to protest discipline procedures also required negotiation. (*GERR* 850:15, *Lincoln County Education Association v. Lincoln County School District,* No. C-64-78, Dec. 28, 1979).

► The California Public Employment Relations Board decided that length of instructional day, preparation time, and rest periods comprise mandatory topics of negotiation because related to hours of employment. (*GERR* 880:18, *San Mateo Elementary Teachers' Association and San Mateo City School District,* No. SF-CE-36, Decision No. 129, May 20, 1980).

The New Jersey Public Employment Relations Commission handed down several cases mandating negotiation involving:

► Changes in salary payment dates;

► Establishing working days in excess of the 180 day minimum for receiving state aid;

► Grant or denial of sabbatical leave. (*GERR* 845:25);

► Decisions to reassign administrative and personnel duties in emergency strike situation, undertaken or continued after strike has ended;

► Creation of non-binding liaison committee to discuss matters not in themselves terms or conditions of employment; and

► Scheduling of an after-school teacher workshop. (*GERR* 835:19).

Permissive Subjects

The following cases defined permissive subjects of negotiations between school districts and teacher unions:

► The type of postgraduate hours qualifying a teacher for advancement was determined a permissive subject of bargaining by the Iowa Supreme Court, because it relates to the public employer's exclusive right to hire and fire based upon individual teachers qualifications. The court upheld an Iowa Public Employment Relations Board ruling overturned by a lower court. (*GERR* 863:25, *Charles City Education Association v. Public Employment Relations Board,* No. 38/63463, April 23, 1980).

► The Supreme Court of North Dakota, interpreting the state's Teachers' Representation and Negotiation Act, concluded that the Act was too ambiguous to mandate negotiation on subjects other than salary, hours, formulation of agreement, binding arbitration, and interpretation of existing agreements. Class size, reduction in force procedures, teacher input into curriculum, teacher evaluation, transfer, and work year schedule, which the court had specifically been requested to rule on, were held permissive items of negotiation. (*Fargo Education Association v. Fargo Public School District,* Civ. No. 9168-A, March 13, 1980).

Non-negotiable

Two significant court decisions flatly denied negotiation of subjects deemed outside the scope of collective bargaining:

► The appellate division of the New Jersey Superior Court ruled that individual religious leave days cannot be granted without a deduction of personal leave, vacation time, or pay. Because such leave would violate constitutional prohibitions against the establishment of religion and would constitute a benefit not possible for nonreligious employees, the court found the issue not arbitrable or negotiable. (*GERR* 879:19, *Hunterdon Central High School Board of Education v. Hunterdon Central High School Teachers' Association,* No. A-4607-78, June 19, 1980).

► The Massachusetts Appeals Court, while holding initial teacher appointments outside the scope of collective bargaining, ruled that school authorities must follow their posted qualifications in filling job vacancies. (*GERR* 875:25, *School Committee of New Bedford v. New Bedford Education Association,* May 30, 1980).

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In several rulings the New Jersey Public Employment Relations Committee delineated impermissible bargaining subjects;

► Assignment of physical education teacher to coach basketball team, despite increase in hours without compensation;

► Discretion of board of education to grant or deny extended sick leave as provided by statute. (*GERR* 845:25);

Refusal of teacher transfer request; and

► Requirement that teachers identify and refer students who may need special learning attention. (*GERR* 835:19).

* * * * *

The Kansas Supreme Court ruled extensively on scope of negotiation in a case which was ultimately dismissed because the union and school district signed a contract in the meantime.

The court mandated negotiation on the following disputed items: reproduction of negotiation agreements, payroll deductions, preparation time, attendance at faculty meetings and access as of right to all information concerning school district financial resources.

Certain proposals were found permissive subjects of bargaining: assignment and transfer, teacher evaluation, teacher load including class size, paraprofessional aides, specific school calendar beginning and ending dates, assignment and equipment storage for travelling teachers, and incidental convenience items for the teacher union, such as use of bulletin board and opportunity to rent equipment.

The court prohibited negotiating an exclusivity clause for the union, because preempted by state law. (*GERR* 866:17, *National Education Association-Kansas City v. Unified School District,* No. 50, 403, April 5, 1980).

CONDUCT OF NEGOTIATIONS

Several court and agency decisions governing the conduct of negotiations are detailed below:

► In a consolidated decision of five cases, the California Public Employment Relations Board ruled that school districts may not freeze automatic longevity and qualification increases on the ground of financial adversity during contract negotiations. Such a freeze constitutes an unlawful failure to bargain in good faith, the board ruled, requiring retroactive reinstatement with interest. (*GERR* 866:19, *California School Employees Association v. Davis Unified School District et al,* No. 116, Feb. 22, 1980).

► The Pennsylvania Supreme Court ruled that a school district may not unilaterally change the terms and conditions of employment, in this case the grievance procedures, while union members were at work without a contract and negotiations had not reached an impasse concerning the matter unilaterally changed by the district. (*GERR* 828:22, *Pennsylvania Labor Relations Board v. Williamsport Area School District,* Nos. 574 and 575, Oct. 1, 1979).

► During a lawful strike, a school district cannot offer individual contracts with a return to work deadline to striking teachers, the Supreme Court of Montana ruled, finding the Billings School District guilty of an unfair labor practice in its attempt to interfere with the employees' right to engage in concerted activities. (*GERR* 847:14, *Board of Trustees of Billings District No. 2 v. State of Montana,* Supreme Court of Montana, No. 14653 December 24, 1979).

► During the course of collective bargaining, a school board may offer binding contracts to individual teachers, the Idaho Supreme Court ruled, but the contracts are modified by the applicable terms of any trade agreement resulting from negotiations then in progress. (27 *Idaho Capital Report,* No. 37, *Buhl Education Association v. Joint School District No. 412,* No. 12504, March 3, 1980).

► The Pennsylvania Labor Relations Board ordered the Richland School District to enter into collective bargaining with the newly certified Richland School Service Personnel Association despite the existence of a ratified agreement with an incumbent teachers' union. (*GERR* 857:16, *Pennsylvania Labor Relations Board v. Richland School District,* Nos. PERA-C-12, 946-C, C-13, 095-C, March 12, 1980).

ARBITRATION OF DISPUTES

From year to year, it is difficult to spot trends in the arbitration of disputes because the resolution on controversy so often depends on the particular fact situations in local collective bargaining agreements. However, one issue is always at the cutting edge of dispute resolution—arbitrability. What appears to be a simple legal principle—only those matters detailed in collective bargaining agreements are suitable for arbitration—turns out, year after year, to be the source of an increasing amount of litigation:

Arbitrability Upheld

Following are several state supreme court decisions that upheld the authority of an arbitrator to decide a dispute involving teachers:

► The Maine Supreme Court upheld an arbitrator's finding that nonrenewal of an extra-curricular employment contract without "just cause" constituted an arbitrable grievance under the collective bargaining agreement and refused to review the arbitrator's award reinstating the employee. (102 *LRRM* 2396, *Westbrook School Committee v. Westbrook Teachers Association,* No. 2116, July 19, 1979).

► The New Jersey Supreme Court upheld an arbitrator's award of two hours pay to teachers for extra time worked the day before Thanksgiving on the technical ground that the school superintendent had failed to decide the teachers' grievance in a timely fashion. The court held the case arbitrable because it constituted a negotiable hours-worked issue. (*GERR* 852:21, *Board of Education of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Regional Education Association,* Feb. 4, 1980).

► The North Dakota Supreme Court ordered arbitration of a school district rule, instituted after negotiations had been completed and the contract signed, which required daily hall monitoring by teachers in place of bargained-for preparation time. (*GERR* 842:20, *Grand Forks Education Association v. Grand Forks Public School District,* Civ. No. 9623, Oct. 23, 1979).

► A school district commits a unilateral change in employment terms and conditions constituting an unfair labor practice when it refuses to submit a grievance to arbitration even after expiration of a contract, the Pennsylvania Supreme Court held. (103 *LRRM* 2299, *Pennsylvania Labor Board v. Williamsport Area School District,* Nos. 574 and 575, Oct. 1, 1979).

► In another case, the Pennsylvania Supreme Court upheld an arbitration decision sustaining an agreement based upon past practice of the school district and the teachers' union, which had been modified by an oral agreement of both parties, where the written contract was silent on the integration of subsequent agreements. (*Ringgold Area School District v. Ringgold Education Association,* No. 72-1979, May 2, 1980).

► A teacher claim that imposition of extra duties by the school board violated the collective bargaining agreement must be submitted to arbitration under a broad arbitration clause, the New York Court of Appeals ruled. (103 *LRRM* 2902, *Wyandanch Union Free School District v. Wyandanch Teachers Association,* No. 393, Oct. 11, 1979).

► The New York Court of Appeals also mandated arbitration of a claimed violation of the disciplinary provisions of the collective bargaining agreement, despite the ambiguity of the scope of the substantive provisions, which would be a question of interpretation for the arbitrator. (103 *LRRM* 2903, *Board of Education, Lakeland v. Barni,* No. 27, Feb. 12, 1980).

In lower court decisions from New York:

► The New York Supreme Court ordered arbitration of a grievance alleging school district noncompliance with evaluation procedures established in the collective bargaining agreement. (102 *LRRM 3016, Oneonta City School District v. Oneonta Teachers Association,* July 5, 1979).

► A teacher complaint that her summary evaluation contravened the collective brgaining agreement qualifies as an arbitrable grievance, the New York Supreme Court held, overturning a lower court stay of arbitration. (102 *LRRM* 2600, *Board of Education of the Clarkstown Central School District v. Jones,* May 7, 1979).

► In another case, the New York Supreme Court ordered arbitration to interpret a contract clause requiring the hiring of teacher aids "within budgetary allocation" where there was no budgetary allocation made for teacher aids. (102 *LRRM* 2742, *Gadbow v. American Arbitration Association,* April 6, 1979).

► Reinstating an arbitration award ordering part-time teachers to be advanced one full salary step in conformance with past practices, the Pennsylvania Commonwealth Court held that the arbitrator properly found the grievance arbitrable and correctly considered the school district's past practice to clarify ambiguous language in the contract. (102 *LRRM* 2642, *Shippensburg Area Education Association v. Shippensburg Area School District,* April 20, 1979).

Appeals courts often must decide not only whether an issue is arbitrable, but whether an arbitrator exceeded his or her authority in making an award.

Lawful Awards

► The Alaska Supreme Court affirmed an arbitrator's authority to award money damages to compensate a teacher for time spent preparing an unfamiliar course to which the school district assigned her in violation of the collective bargaining agreement. (*GERR* 860:28, *Board of Education, Fairbanks North Star Borough v. Ewig*, No. 4353, March 21, 1980).

► The Minnesota Supreme Court outlawed unilateral modifications or amendments to arbitration awards even where the result of good faith mistake, and ordered strict adherence to statutory filing deadlines. (*GERR* 837:23, *Crosby-Ironton Federation of Teachers v. Crosby-Ironton School District*, No. 314, Oct. 12, 1979).

► The subsequent appointment of the arbitrator as Hearing Officer for the School district does not justify vacating the arbitrator's award on the basis of an inference of conflict of interest where there is no claim or proof of actual bias favorable to the school district, the New York Court of Appeals ruled. (*In the Matter of Harvey S. Kornit*, No. 107, March 20, 1980).

► An arbitrator's decision that an unfair evaluation of a teacher be expunged was a proper grievance remedy, the Maine Supreme Court held. (*Kittery Teachers Association v. Kittery School Committee*, No. 2309, April 16, 1980).

► The Maine Supreme Court also upheld an arbitration award of reinstatement with back pay to a teacher whose contract was not renewed in contravention of an expired contract requiring "just cause," where negotiation ground laws provided that successor agreement would take effect from date of expiration of the former contract, and the successor contract continued the requirement of "just cause" for nonrenewal of contract. (102 *LRRM* 2393, *Caribou Board of Education v. Caribou Teachers Association, No. 2088, June 19, 1979).*

Excessive Awards

In several instances, however, courts ruled that an arbitrator exceeded his or her authority in the remedy or type of award granted:

► The Maine Supreme Court ruled that an arbitrator exceeded his authority under the collective bargaining agreement in ordering the school board to negotiate with the teachers' union before changing the deployment of specialist teachers and that the arbitrator properly determined the arbitrability of the issue. The court remanded the case to the arbitrator to decide whether the board breached the contract providing that an adequate number of specialists teachers be hired. (102 *LRRM* 2393, *Caribou Board of Education v. Caribou Teachers' Association*, No. 2115, July 19, 1979).

► Affirming a lower court, the Minnesota Supreme Court found a demand for extra pay for added classes taught non-arbitrable because the subject was not mentioned in the contract; the arbitrability of a dispute concerning preparation time was debatable and thus a question for the court; and the school district committed no unfair labor practice in refusing to arbitrate. (*GERR* 866:20, *Minnesota Education Association v. Independent School District, Grand Meadow*, No. 413, March 21, 1980).

► An arbitrator exceeds his scope of authority by making an award based on rights found in contracts succeeding the initial grievance, the Wisconsin Supreme Court held. (*GERR* 854:18, *Milwaukee Board of School Directors v. Milwaukee Teachers' Education Association*, No. 77-345, Jan. 15, 1980).

In lower court decisions:

► The Commonwealth Court of Pennsylvania set aside as not rationally derived from the collective bargaining agreement an arbitration award of the difference in salary between a grievant's job and another position which was given to a non-union employee. (*Neshaminy School Service Personnel Association v. Neshaminy School District*, No. 682, C.D. 1979, July 28, 1980).

► In another case, the Pennsylvania Commonwealth Court ruled non-arbitrable the question of teachers' entitlement to pay deducted for one-day strike, where the contract set a 180-day year and non-striking teachers had suffered no pay deduction.

Finding as a matter of law that the issue did not arguably involve any interpretation or violation of the collective bargaining agreement within the context of the arbitration clause, the court affirmed a lower court reversal of a Pennsylvania Labor Relations Board order to arbitration. (102 *LRRM* 2637, *Pennsylvania Labor Relations Board v. Bald Eagle School District*, No. 47 C.D. 1978, July 13, 1979).

► Holding that an arbitrator's jurisdiction to settle a grievance arises solely from a binding contract to submit the dispute to arbitration, the Michigan Court of Appeals affirmed a lower court decision vacating an arbitration award. (*Waterford Association of Educational Secretaries v. Waterford School District*, No. 43173, Jan. 23, 1980).

► A Pennsylvania Commonwealth Court ruled that an arbitrator acted outside the scope of his authority under the collective bargaining agreement by creating the new category of "long-term," as opposed to per diem, substitute teachers and providing for their payment according to his personal notions of fairness. (102 *LRRM* 2437, *Dale v. Leechburg Area School District*, April 30, 1979).

► The Massachusetts Appeals Court held that the claim that a school committee violated the collective bargaining agreement by failing to follow posted qualifications in filling a vacancy for school guidance counselor constituted a proper subject for arbitration. However, the court vacated the award ordering the appointment of the grievant or compensation over an indefinite period until her appointment as impinging upon the education policy authority of the school committee. (*School Committee of New Bedford, v. New Bedford Educators Association*, Mass. App. Ct. Adv. Sh. 1980, 1069, May 30, 1980).

► In one case, the arbitrator had ruled that a school district breached the collective bargaining agreement by initiating the contracting out of coaching jobs without first negotiating the mandatory bargaining issue with the union. The PERB disallowed the award as "palpably wrong" in determining a violation of state law as only the PERB has the authority to do. (*Eugene Education Association v. Eugene School District*, No. C-141-78, Jan. 18, 1980).

► In another case, the PERB disapproved the arbitrator's finding of a state law violation, and went on to overrule as "palpably wrong" the arbitrator's characterization of two substitute teachers as "regular full time" rather than temporary unsupported by the contract or state law. (*Willamina Education Association v. Willamina School District*, No. C-93-78, Jan. 23, 1980).

In each case a PERB member entered a separate concurrence agreeing with the Board's result but criticizing the use of the "palpably wrong" test formulated for private sector labor relations under federal law. (*GERR* 856:17)

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A California arbitrator, finding from the conduct of the parties the continued existence post-contract of the grievance procedure, went on to rule that a teachers union's claim that the school district violated "past practice and the status quo" by assigning additional duties and extending the school day, was non-arbitrable because it was outside the scope of the grievance procedure under the collective bargaining agreement. (73 *LA* 1264, *In re Santa Cruz City School District and Santa Cruz Teachers' Association*, Dec. 12, 1979).

Scope of Judicial Review

Generally, a court will defer to an arbitrator's decision unless it is arbitrary or capricious. In three state supreme court rulings on this issue last year it was held that:

► A court cannot vacate an arbitrator's award compensating physical education teachers along with teachers of traditionally academic subjects for an increase in class size violating the collective bargaining agreement absent a manifest disregard of the contract provisions or a completely irrational result. (*Coventry Teachers' Alliance v. Coventry School Committee*, Rhode Island Supreme Court No. 78-296, July 21, 1980).

► A trial court cannot set aside an arbitrator's decision because it feels that the arbitrator's interpretation of disputed contract language disregarded the plain or apparent meaning. The higher court reinstated an arbitration award of seven days pay for extra days added to the academic calendar because of emergency school closing, based upon the arbitrator's application of past practices to determine the meaning of "attendance days" in the collective bargaining agreement. (103 *LRRM* 2730, *Orchard Park Teachers Association v. Board of Education*, New York Supreme Court No. 699/1979, Nov. 16, 1979).

► A determination by an arbitrator that a teacher submitting a grievance had complied with procedural deadlines set forth in the contract should be deferred to. (*Board of School Directors v. Tri-Town Teachers Association*, Maine Supreme Court No. 2294, April 2, 1980).

► A contempt proceding against the school committee is the appropriate means to seek compliance with a judgment confirming an arbitration award favoring the school union, the Supreme Court of Rhode Island ruled. However, in this case the court found the judgment unenforceable by contempt because the award was not sufficiently clear, unequivocal, and specific to inform the school committee what it was required to do or refrain from doing. (*Cranston Teachers Association v. School Committee of the City of Cranston*, No. 78-111, July 8, 1980).

► Under Maryland law, all challenges to the validity of an arbitration award are deemed waived unless made within 30 days of the decision, the Maryland Court of Appals held. (*GERR* 851:25, *Board of Education of Charles County v. Education Association of Charles County*, Nov. 20, 1979).

► The Massachusetts Appeals Court emphasized the difference in judicial review of the correctness of an arbitrator's factual finding that a school committee breached a non-discrimination clause by hiring a male over a female and the enforceability of the award ordering promotion. The court remanded the case through the trial court to the arbitrator to fashion an award consistent with the appeals court's opinion, including past but not future compensation. (*GERR* 883:22, *Blue Hills Regional School Committee v. Flight*, Mass. App. Ct. Adv. Sh. 1980, 1661, Aug. 29, 1980).

► Under Rhode Island law there is no appellate review of trial court rulings on arbitrator decisions unless the parties have petitioned for a writ of certiorari, the Rhode Island Supreme Court held, dismissing teachers' union an appeal of a superior court order partially in validating an arbitration award. (102 *LRRM* 2434, *Pawtucket Teachers' Alliance v. School Committee of the City of Pawtucket*, No. 77-359, March 27, 1979).

Election of Remedies

A teacher often has the option to elect to pursue both statutory and contractual remedies, as the cases would indicate:

The New York Supreme Court confirmed an arbitration award reinstating a dismissed teacher, overruling the lower court's finding that the teacher had waived arbitration by pursuing state law remedies. (*In the matter of Susquehanna Valley Teachers Association, v. Board of Education of the Susquehanna Valley Central School District*, No. 33019, June 26, 1980).

► A teacher who fails to exercise his right under Pennsylvania law to appeal to the state Secretary of Education a school board decision demoting him has not waived his contractual right to submit his grievance to arbitration. (103 *LRRM* 2370, *West Middlesex Area School District v. Pennsylvania Labor Relations Board*, Court of Common Pleas No. 1274 C.D. 1978, Sept. 26, 1979).

► A school board must negotiate the subcontracting of custodial services which results in net loss of jobs to the bargaining unit following demand by the union, and must cease all subcontracting until negotiations end in agreement or impasse, the Massachusetts Labor Relations Commission held. (*GERR*, 839:10, *Franklin School Committee v. American Federation of State, County, and Municipal Employees Council*, No. MUP-3206, July 18, 1979).

UNFAIR LABOR PRACTICES

Two state labor agencies held school employee unions guilty of committing unfair labor practices in decisions outlined below:

► In a non-teacher case, the Florida Public Employee Relations Commission determined that a school employee union violated state law and committed an unfair labor practice in failing to comply with state law procedures to notify non-union bargaining unit members of the time and place of a ratification meeting and their right to vote at it. (*GERR* 875:24, *Anderson v. International Brotherhood of Painters and Allied Trades, AFL-CIO*, No. CB-79-009, May 5, 1980).

► When a union and school district have mutually agreed to issue a fact finding report on several subjects of a bargaining impasse, the union commits an unfair labor practice by going on strike before the expiration of the statutory 10-day pre-publication period, the Vermont Labor Relations Board held. Since the school district was also found guilty of an unfair labor practice (see below), the Board limited the union's penalty to the district's reasonable expenses, including attorney's fees incurred in bringing the charges to the Board. (*GERR* 848:15, *Board of School Commissioners of City of Rutland v. Rutland Educational Association*, Nos. 79-60R and 79-61R, Nov. 20, 1979).

School Districts

School districts were found guilty of unfair labor practices in the following state court and agency decisions:

► Under Indiana law requiring an employer to provide meaningful input and exchange of ideas with bargaining agent concerning all issues related to working conditions, an Indiana appeals court has found a school district guilty of unfair labor practice by refusing to consult the teacher union before implementing a new evaluation plan. (*GERR* 832:20, *Evansville-Vanderburgh School Corporation v. Roberts*, No. 1-179-A-13, Oct. 1, 1979).

► In a case noted above, the Vermont Labor Relations Board determined that the school district had committed unfair labor practices in hiring non-union substitute teachers during a teacher strike at average full-time salaries and impunging the honesty of the union negotiators in remarks to the media. (*GERR* 848:14, *Board of School Commissioners of City of Rutland v. Rutland Education Association*, Nos. 79-6OR and 79-61R, Nov. 20, 1979).

► Reversing a hearing examiner's recommended order (*GERR* 841:19), the Indiana Education Employment Relations Board ruled that a school district had violated state law and committed an unfair practice by forming an advisory committee of teachers selected by the district to implement and educational improvement program. The full board found that the school district's action violated the union's exclusive right to select school employees authorized to officially study, discuss, or make recommendations on mandatory bargaining subjects. (*GERR* 843:35).

► A school board was found responsible for the coercive and retaliatory actions of its superintendent and principal during negotiations by the South Dakota Division of Labor and Management. The school board committed an unfair labor practice in declaring salary step placement nonnegotiable and refusing to bargain on that issue and on maximum pay, and in unilaterally changing personal leave and employee lounge policies, the Division ruled, but did not engage in bad faith bargaining in issuing contracts for salaries above salary schedule, making only three salary offers, and refusing to increase final offer despite budget surplus. (*GERR* 850:16, *Kadoka Education Association v. Kadoka Independent School District*, Nos. 2OU, 21U, 1977-78 and 3U 1978-79, Jan. 3, 1980).

► In another case, the South Dakota Department of Labor, Division of Labor and Management ruled that a school district had bargained in bad faith by refusing to continue negotiations with the teachers' union on in-service days, leave policy, staff reductions and grievance procedures, including failing to provide an analysis of the rationale submitted by the district for a proposal as reasonably requested by the union, and attempting to convince union members to bargain individually in contravention of state law. (*GERR* 871:12, *Stanley County Education Association v. Stanley County School District*, 11 U 1978-79, Deputy Director David Gaurder, May 2, 1980).

► After having agreed to a no-sanction strike settlement, a school district commits an unfair labor practice by placing commendatory letters in the files of teachers who did not strike, the California Public Employment Relations Board ruled. (*GERR* 878:18, *San Diego Teacher Association and San Diego Unified School District*, No. LA-CE-194, June 19, 1980).

► The San Francisco school board committed an unfair labor practice by unilaterally adopting a school calendar decreasing instructional days following a strike settlement agreement which provided that the school board and teacher union would meet later to discuss a calendar incorporating the legally mandated minimum days, the California Public Employment Relations Board decided in another case. (*GERR* 875:23, *San Francisco Federation of Teachers and San Francisco Unified School District*, No. SF-CE-426, May 28, 1980).

► The Kansas Supreme Court dismissed as moot due to subsequent completion of bargaining and ratification of contract a school district's appeal of a trial court decision that the district had committed a prohibited practice by unilaterally issuing contracts to individual teachers during on-going negotiations. (105 *LRRM* 2279, *National Education Association—Topeka v. Unified School District, Shawnee County*, No. 50401, April 5, 1980).

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There were also decisions in which unfair labor practice charges brought against school districts were dismissed:

► Affirming a lower court's dismissal of unfair labor practice charges brought against a school board by a teachers' union, the North Dakota Supreme Court found the school district immune from liability for failure to renew teachers' contracts based upon the district's mistaken impression that statutory notice requirements continued during negotiations. (105 *LRRM* 2338, *Lefor Education Association v. Lefor Public School District*, No. 9598, Aug. 22, 1979).

► Unfair labor practice charges brought against a school district for permitting a rival teacher union access to district mailboxes and other facilities unconnected with any certification challenge were dismissed by the New York State Public Employment Relations Board because the record did not show that the access permitted was of a nature or purpose constituting improper interference with the status of the complaining union as exclusive bargaining representative. (*GERR* 865:24, *In the Matter of Gates-Chili Central School District and Gates-Chili Teachers Association and Gates-Chili Educators Association*, No. U-3885, May 1, 1980).

DUTY OF REPRESENTATION

Charges of failing their duty to represent brought against school employee unions were dismissed in the following court case and agency ruling:

► All failure to represent charges must be exhausted before the state Public Employment Relations Board before they can be considered by the courts, the Pennsylvania Commonwealth Court held, dismissing a former employees' suit against a union which withdrew its request for arbitration of her termination grievance. (*GERR* 864:15, *Ziccardo v. Commonwealth of Pennsylvania*, No. 2701 C.D. 1978, April 8, 1980).

► In a non-teacher case, the California Public Employment relations Board found that a school employee union did not breach its duty to represent by conducting a pay parity study aimed at ending discriminatory treatment of women employees and negotiating a contract providing higher pay increases for women employees to remedy past discrimination. (*GERR* 871:13, *Coffron v. California School Employees Association, Redwood*, Nos. SF-CO 80, 81, May 28, 1980).

DISCLOSURE OF INFORMATION

Unions traditionally keep close guard over their membership lists—and teacher associations are no exception. In a case with far-reaching implications, the U.S. Court of Appeals for the Fifth Circuit ruled that a union bringing charges of harassment by a school board against specifically named union members was not required to disclose its complete membership list in pre-trial discovery proceedings.

The federal appeals court noted that disclosing the complete list would subject union members to precisely the retaliation they sought to avoid by bringing the suit and criticized the lower court's whole sale dismissal of the case as sanction for the union's noncompliance. The trial court was ordered to tailor further discovery consistently with constitutional associational and privacy rights and the demonstrated necessity of disclosure for the preparation and disposition of the case. (*GERR* 869:13, *Hasting v. North East Independent School District*, CA 5, No. 77-3499, April 14, 1980).

Two state agency cases dealing with disclosure by school districts and unions follow:

► The Connecticut State Board of Labor ordered a school board to provide a teachers' union with the best recollection possible of destroyed documents requested by the union pertaining to a grievance of non-reappointed teachers. The school board was prohibited from destroying documents or evidence relevant to grievances in the future. (*GERR* 858:20, *West*

Hartford Board of Education and West Hartford Education Association, No. 1826, Nov. 6, 1979).

► A school district which has undertaken in the collective bargaining agreement to provide updated employee address lists to the teacher association designated exclusive bargaining representative is not required to disclose the lists to a minority union, the California Public Employment Relations Board ruled. (*GERR* 883:20, *San Diego Federation of Teachers v. San Diego Unified School District*, Case No. LA-CE-1067, Decision No. HO-U-77, July 16, 1980).

Contract Settlements

The following are settlements in some of the biggest school systems in the country and may set guidelines for negotiations elsewhere:

► *San Francisco:* Teachers ended a seven-week strike by approving a 15.5 percent pay and benefit package spread over the two-year contract. The city's paraprofessionals also accepted a 15.5 percent agreement. The school district rehired 715 of the 1200 teachers laid-off earlier in the year. Three thousand teachers and 2000 paraprofessionals are covered by the contracts. (*GERR* 834:23).

► *Chicago:* 27,000 teachers in Chicago are the highest paid in the nation after their two-year contract ratified in October. Starting teachers with a B.A. will now earn $12,750 in 1979-80 and $13,770 in 1980-81. The package provides average increases of 8.5 percent in the first year and 8 percent in the second. In addition, the contract provides equal increases for substitute teachers and assurances of no teacher cutbacks (*GERR* 833:22).

► *Cincinnati:* Teachers in Cincinnati—who have not had a pay increase since 1977—have reached a two and one-half year contract providing a 36.9 percent rise in pay and benefits. A school board official told BNA that when taken over the five-year period since the last raise, the new package averages only 7 percent per year. Six thousand school employees were thrown out of work for three weeks earlier in the year when the schools were closed due to a lack of funds (*GERR* 845:27).

► *Pittsburgh:* 3,800 teachers have signed a three-year agreement providing across-the-board pay raises of 10 percent in each year. Starting pay for teachers with a B.A. will earn $11,960 in the first year of the contract. The board will also pay 99 percent of the teacher's medical insurance payments (up from 95 percent). And the 141 teachers laid-off early in the year will all be rehired. Finally, the package contains a special incentive plan to induce older teachers to retire early—opening up places for younger teachers (*GERR* 880:28).

► *Dallas:* Salaries for teachers in Dallas, Texas will rise by 15 percent next year. Beginning teachers with a B.A. will find their pay rising from $10,530 to $12,110. The teachers' representatives had asked for 20 percent increases, but public employers are not obligated to recognize or bargain with their workers, and the demands were rejected. The new schedules will cover 7,000 teachers in the Dallas system. School officials note that the package wil cost $26 million and will require a 16.8 percent increase in property taxes for funding (*GERR* 855:30).

► *Washington, D.C.:* Teachers in the nation's capital agreed to a two-year contract without provisions to lengthen the school day and year sought by the school board. Salary increases for the city's 6,000 teachers will be the same as those granted for federal employees—about 7 percent for 1979-80. The teachers had been on strike for three weeks in March, in violation of a D.C. Superior Court's no-strike injunction (*GERR* 831:210).

► *Milwaukee:* Teachers have ratified a two and one-half year contract which will provide a 9 percent across-the-board increase in 1980 and an 8.25 pecent rise in 1981. Starting teachers with a B.A. will receive $11,253. The system's 5,700 teachers will also have a new dental package whereby the board will pick up most of the insurance costs (*GERR* 877:22).

► *Hawaii:* Representatives of the Hawaii State Teacher's Association and the Hawaii Board of Education signed a two-year agreement after more than 20 months of negotiations and 50 different bargaining sessions. The new contract covers 10,000 teachers and calls for 7 percent increases each year as well as a $20 per month annual pay rise (*GERR* 846:29).

► *Albuquerque:* Teachers have approved a two-year settlement providing an 11.5 percent increase and a $300 one-time cost-of-living adjustment. The contract will be reopened next year (*GERR* 871:23).

► *Jacksonville:* Teachers in Duval County, Florida settled on a one year contract providing 11 percent increases—averaging $1500 per teacher. Beginning teachers with a B.A. will receive $11,000 under the new agreement. The area's 5,500 teachers have a new feature in their contracts, a "sick-leave pool," which allows those with unused sick leave to contribute a day into a general pool available to those with extended illnesses (*GERR* 870:23).

► *Baltimore:* The Teachers' Union signed a two-year contract raising salaries by 12 percent and restoring step increases frozen since 1976. The contract also increased life insurance coverage from $5,000 to $10,000 and added a health maintenance organization option in its insurance package. The contract covers 8,100 teachers and 2,000 teacher aides (*GERR* 867:29).

The following settlements set terms and conditions in smaller districts. They reflect general trends in negotiations as well as regional differences in salaries:

► *Chandler, Arizona:* Teachers in this suburb of Phoenix accepted a 12.5 percent raise in their base salary and introduced a dental plan into their medical insurance package. The arrangements were negotiated on a "meet and confer" basis as Arizona does not allow public employees to collectively bargain (*GERR* 867:32).

► *Boise, Idaho:* Members of the Education Association ratified a three-year teachers contract offering an 11 percent increase in pay. Beginning teachers with a B.A. will receive $10,450 in the first year of the contract which will be reopened next year for salary adjustments (*GERR* 864:26).

► *Cumberland Valley, Pennsylvania:* Teachers have signed a three-year agreement which provides a 9.3 percent wage increase in each of the first two years and a reopener for the final year. Starting teachers with a B.A. will earn $10,325 in the 1980-81 school year.

► *Bowling Green, Ohio:* The board of education unanimously approved a one-year teachers contract providing salary increases from 9.4 to 19.6 percent. Pay for beginning teachers will rise from $10,165 to $11,125 while the highest paid teachers will find their salaries rising from $20,239 to $24,219 (*GERR* 855:24).

► *Ogden, Utah:* The 600 teachers will receive a 13.9 percent increase in pay and benefits under their new one-year contract. Beginning teachers with a B.A. will now make $11,373 while the best paid will earn $20,747. The package also includes a paid prescription plan and the elimination of deductible charges on health insurance coverage (*GERR* 857:24).

► *Eureka, California:* Teachers settled disputes brought under their contract reopener clause and ended a six-day strike this March. The changes—in the second year of their three-year contract—provide a seven percent increase in pay which will raise beginning teachers' salaries to $10,900 in 1979-80 (*GERR* 856:28).

► *Shawnee Heights, Kansas:* Pay will increase across-the-board by 12.3 percent for its teachers in 1980-81. Beginning teachers with a B.A. will receive $12,300 while the highest paid will earn $21,181 (*GERR* 868:31).

► *Bergen County, New Jersey:* Vocational and technical teachers have signed a three-year agreement with their school boards, providing 9 percent across-the-board increases each year. The salary range is now $21,800—$27,252, up from $20,000—$25,000 (*GERR* 868:29).

STRIKES

LEGAL DEVELOPMENTS

School employee strikes continue to be an important source of litigation. Thirty-two states and the District of Columbia expressly deny teachers the right to strike, with the right probably prohibited in another eight. Of the 10 states that recognize some right to strike, four states refuse teachers permission to strike where it would result in a clear and present danger to the public. The following are important court decisions involving the right to strike:

Right to Strike

► Vermont law gives public school teachers the right to strike in connection with pending or future negotiations so long as there is no "clear and present danger" to a sound school program, a Rutland County superior court judge ruled, denying the school board's request for a permanent injunction and damages due to a teachers' strike. Applying a First Amendment test, the judge found that the strike fell short of interfering with minimum legal and state aid class attendance criteria, but that such a clear and present danger permitting an injunction might arise at a later date. (*GERR* 854:11, *Board of School Commissioners of City of Rutland v. Rutland Educational Association,* No. 5371-79Rc, Jan. 11, 1980).

► Approving a lower court finding of clear and present danger to the community from a continued teacher strike, a Pennsylvania appellate court affirmed an order providing for return to work and continued negotiations, but reversed the lower court's setting of work terms and conditions proposed by the school district but not bargained for or accepted by the union. (*Bethel Park School District v. Bethel Park Federation of Teachers,* Nos. 230 C.D. 1980, 236 C.D. 1980, 2275 C.D. 1979, Pa. Comm. Ct., Sept. 24, 1980).

► Holding a special hearing on his own initiative to determine whether his earlier no-strike order had been violated, a New Jersey Superior Court Judge called teachers who struck in defiance of New Jersey law prohibiting strikes by public employees "mean-spirited, selfish individuals" who threatened the democratic "system of ordered liberty." Rather than issue fines or contempt citations, the court ordered a return to work deadline for which teachers would be fired for failure to comply. The teachers ratified a settlement negotiated by the board and union in time for compliance. (*GERR* 838:14, *Board of Education of the Vocational School of Sussex County v. Sussex County Vocational-Technical Teacher Education Association,* Sussex County Superior Court, No. C-221-79E, September 26, 1979).

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In the most important state Supreme Court decision in this area, the Supreme Court of Illinois ruled that a school district may offer tenured teachers a contract containing a no-strike clause with a salary increase, provided that tenured teachers who do not accept the new contract continue employment at a salary under the prior year's contract as provided by state law, including longevity and educational salary increments. (*Bond v. The Board of Education of Mascoutah,* No. 55213, June 20, 1980).

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In protracted litigation arising from the jailing of Brunswick, Ohio teachers for contempt in anticipation of a threatened strike, the teacher union was unsuccessful in its federal court claim following its victory in the Ohio Supreme Court:

► The Brunswick teachers brought suit in federal court complaining that the school board violated their civil rights by prolonging their jail time when the board's attornys intentionally misrepresented to the state appeals court that the teachers had already been judged in comtempt. The U.S. Court of Appeals for the Sixth Circuit, upholding the lower federal court decision, dismissed the suit on the grounds that the board's actions did not amount to malice. (104 *LRRM* 2537, *GERR* 882:14, *Lucsik v. Brunswick Board of Education,* CA 6 No. 79-3243, May 22, 1980).

► The Ohio State Supreme Court ruled that a trial court prematurely incarcerated and fined teachers who refused to sign an affidavit assuring compliance with a no-strike order that had not yet taken effect. Ruling that the teachers could not be fined or jailed for intention to defy the order until the performance was actually due, the Ohio Supreme Court overturned the portion of the appeals court decision which approved the jailing, and affirmed the appeals court's ruling denying the prospective fine. (*GERR* 882:25, *Board of Education Brunswick Educational Association,* 61 Ohio 2d 290, March 12, 1980).

Fines and Penalties

After the issue of right to strike, the question of imposition of fines and penalties against striking teachers is paramount.

Litigation in the area of punitive action resulted in the following court and agency rulings:

► In Springfield, Massachusetts, a Superior Court judge increased fines of $18,000 he levied against the Springfield Education Association (SEA) in conjunction with a May 9, 1980 temporary restraining order issued against a teacher walk-out to $20,000 on May 13 and $30,000 on May 16, 1980. Seventeen striking teachers were jailed for contempt on May 13, 1980 (*GERR* 862:20). In September 1980, the same judge refused to freeze the SEA's banking and checking account assets upon motion by the City of Springfield.

► A District of Columbia Superior Court Judge reduced the $343,350 fine she originally ordered against the Washington Teachers Union due to an illegal strike to $103,005—the amount suggested by the union. (*GERR* 841:25).

► After pleading no contest to charges of violating a California Superior Court return to work order, the San Francisco Federation of Teachers was found guilty on six counts and fined $3,000 in a case pressed by the Public Employment Relations Board that the union and the school board had preferred to drop. (*GERR* 841:25).

► In a case involving the Billings school district, the Montana Supreme Court ruled that the district unfairly fired a nontenured teacher due to an evaluation "tainted" by the teacher's union and strike involvement. The court established a "but for" test which puts the burden on the school district to show that it would not have rehired the teacher even if she had not participated in the strike. (*GERR* 847:15, *Board of Trustees of Billings School District v. State of Montana*, No. 14722, December 21, 1979).

► Teachers who contracted to work a 180-day academic year were held by a Pennsylvania appellate court not entitled to pay deducted for one day on which they were out on strike. Affirming a lower court which had reversed an order by the Pennsylvania Labor Relations Board to submit the case to arbitration, the court ruled that there was no interpretation or violation of the collective bargaining agreement to decide. (102 *LRRM* 2637, *Pennsylvania Labor Relations Board v. Bald Eagle School District*, No. 47 C.D. 1978, July 13, 1979).

► In another Pennsylvania case, the court decided that striking teachers were not entitled to unemployment compensation. Reversing the State Unemployment Compensation Board's award of benefits, the judge emphasized that the work stoppage was instigated by the union and did not constitute a lock-out. (*GERR* 873:14, *Colonial School District v. Pennsylvania Unemployment Compensation Board*, Pa. Comm. Ct. C.D. No. 1126, July 15, 1980).

► Payment for four days a school was closed due to an illegal strike for all teachers who signed an affidavit certifying that they did not participate and would have taught but for the strike was a proper salary classification, ruled an Illinois appellate court. (*Ashcraft v. Board of Education of Danville*, 4th App. Ct. of Ill., No. 15552, May 5, 1980).

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In an unusual ruling, the Oregon Teacher Standards and Practice Commission fined the Eugene School District over $66,000 for allowing non-certified teachers to work in classrooms during a teachers' strike.

Taylor Act

Federal district courts in New York considered the constitutionality of New York state's Taylor Act, which bans strikes by public employees sets up a presumption of guilt for any employee absent during a period determined to constitute a strike, and until recently imposed a two-day deduction of salary for every day of strike participation.

Under the Act, the chief executive officer determines the existence and dates of a strike after such investigation as she or he pleases and has the initial sole power to evaluate an individual's objections to a determination of strike involvement before passing them on to a hearing officer. This procedure has been challenged as leaving wide discretion to determine strike participation in the hands of school superintendents and hearing officers employed by school districts who have an indirect financial interest in finding individual strike involvement because the fines inure to the benefit of the school districts:

► A federal district court in New York City dismissed the suit brought by two teachers who challenged the constitutionality of the Taylor Act determination of strike participation by a superintendent because the teachers had not shown sufficient pecuniary interest of the superintendent in the outcome to justify bypassing local procedures. The court implied that the local state courts were the proper place to make any federal constitutional claims concerning the Act's attachment of wages before a hearing or the Act's procedures for determining individual strike participation. (*Starrs v. Bock*, S.D. N.Y., No. 77 Civ. 5435, Dec. 21, 1978).

► However, a federal court judge sitting in Buffalo, New York refused to dismiss a class action suit brought by teachers who made the same constitutional claim that their wages were deducted without an impartial hearing because both the superintendent who made the initial review and any hearing officer appointed by him had an indirect pecuniary interest in finding against the teachers. The court ruled that more factual evidence would be required to resolve the issues. (*Wolkenstein et al. v. Reville et al*, W.D. N.Y., No. 77 Civ. 618 June 11, 1979).

► In the federal courts' final and most important word on the Taylor Act, the Federal court in the Eastern District of New York dismissed a suit brought by teachers challenging the lack of unbiased hearing and the harsh effect of the two for one penalty. Relying completely on the *Starrs* case above, the court refused to discuss the question of bias in the proceedings for determination of strike involvement. The court noted the hardship to teachers resulting from the deduction of one day's pay for every day of participation in the 47-day strike, but refused to spread the payments over a period of time. (*GERR* 845:23, *Tepper v. Galloway*, E.D. N.Y., 481 F. Supp. 1211 Dec. 21, 1979).

Loss of Instructional Days

State funding for school districts usually depends upon the number of pupil days; therefore, loss of instructional days due to teacher strikes has become increasingly significant to teachers and school districts.

In three related cases, the Supreme Court of Pennsylvania has ruled that the state Department of Education may take into account school days under the legal minimum lost due to strikes in determining the subsidy which a school district is to receive. (*School District of Pittsburgh v. Department of Education*, No. 265a; *Pennsburg School District v. Department of Education*, No. 265b; *Centennial School District v. Department of Education*, No. 265c, Pa. Sup. Ct. July 21, 1980).

Earlier, an appellate court in Pennsylvania decided that state law established a mandatory minimum number of pupil instruction days which was to be followed regardless of interruptions due to "strikes or any other cause." (*Scanlon v. Mount Union Area Board of School Directors*, Pa. Comm. Ct., No. 351 C.D. 1979, April 29, 1980).

Teachers in Miamisburg, Ohio filed suit to bar the school board from implementing a policy of prohibiting students to make-up exams and other work missed during a teacher strike. The teachers' union contends that the policy effects a reprisal despite the Board's agreement in ending the strike that there would be no reprisals against anyone who participated in the strike. (*GERR* 883:28).

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In a non-teacher case, the Massachusetts Labor Relations Commission exonerated the Chicopee Public School Custodians Association from strike liability for a sickout involving more than 50 percent of the custodians following a meeting held at the union president's home to discuss an impasse in negotiations. The Commission ruled the evidence failed to satisfy the minimum standard of proof by a "preponderance of the evidence" that the union was responsible for the high absenteeism. (*GERR* 874:18, *Chicopee School Committee and Chicopee Public School Custodians Association et al;* Mass. LRC No. S1-99, May 5, 1980).

STRIKE TABLE

BNA'S TABULATION SHOWS 139 STRIKES IN 11 STATES AND PUERTO RICO

According to BNA's tabulation of the available data, there have been approximately 139 strikes in 11 states and Puerto Rico, as of Oct. 31, 1980.

The largest strike, affecting about 23,000 teachers affiliated with the American Federation of Teachers in Philadelphia, Pennsylvania, began August 31 and ended September 22 with a two-year agreement that provides no raise in the 1980-81 school year and a 10 percent increase for 1981-82, effective September 1, 1981. The settlement is in line with ones the city reached earlier in the year with municipal employee unions that called for little or no increases this year offset by 10 percent raises next year.

Apart from the pay raises, other issues that triggered the three-week strike involved class size, preparation time, job security, and the layoff of 2,300 teachers and other school employees June 1. The new pact stipulates that all teachers laid off in June are to be returned to work at the same schools, although some leveling off and reassignments were anticipated. The 1,600 to 1,700 teachers affected by this provision have job security for the first year of the contract. In the second year, the school board can effect certain layoffs if enrollments decline, but must notify any potential layoffs prior to June 1, 1981, and pay for retraining such notified teachers for other areas and programs such as bilingual education.

Class sizes in the new contract remain at 33, aside from classes for socially and emotionally disturbed children, which are increased from eight to 12. Preparation periods remain at five at the elementary school level and six at the junior high school level. In the area of fringe benefits, the board agreed to pay unlimited major medical benefits and a maximum of 20 percent of $2,000 co-insurance, effective September 1, 1980. Also on that date, the board began paying 100 percent of Blue Cross, medical, surgical, and major medical benefits.

Other large units affected were AFT affiliates in Newark, New Jersey, and Rochester, New York, and a local of the National Education Association in Grand Rapids, Michigan.

Michigan reported the greatest number of strikes — 41 by BNA's count — followed by 33 in Illinois and 28 in Pennsylvania. Arizona, California, Idaho and Puerto Rico each had one strike.

Of the ones settled, the strike in the Greensborough-Salem district in Pennsylvania lasted the longest — 34 working days, followed by the Westerly, Rhode Island, walkout, which lasted 26 days. There were 14 one-day strikes and one lockout in Shalor, Pennsylvania.

BNA's tabulation of strikes follows:

School District	Teachers Affected	Pupils Affected	Strike Date	Return Date	Issues
ARIZONA					
Sierra Vista	300 (NEA)	5,700	9/3	10/3	Salary, binding arbitration
CALIFORNIA					
San Jose	1,650 (NEA)	35,000	9/8	9/22	Salary.
IDAHO					
Post Falls	135 (NEA)	2,800	8/28	8/29	First master contract.
ILLINOIS					
Alton	500 (NEA)	9,450	8/22	8/25	Salary, COLA, board-paid retirement.
Athens	53 (NEA)	936	9/2	9/4	
Barrington 220	348 (NEA)	6,900	9/8	9/9	
Benton	75 (AFT)		8/27	9/8	Salary, salary schedule.
Bloom Township 206	246 (NEA)	4,800	9/2	9/10	Salary, insurance, class size.
Carlyle	72 (NEA)	1,630	8/22	8/27	
Carrollton	46 (AFT)		8/22	8/28	Salary.
Cartersville	75 (NEA)	1,476	8/25	8/29	
Collinsville	388 (NEA)	6,792	8/25	8/29	Salary, insurance.
Consoli H.S. Dist. 230	351 (NEA)	6,172	8/25	8/28	
East Richland	162 (NEA)	2,650	8/28	9/14	Salary, contract language.
East St. Louis	1,300 (AFT)		9/16	9/18	Board's unilateral change of language.
Elvardo	40 (NEA)	648	8/25	8/29	Salary, health insurance.
Evergreen Park	51 (NEA)	1,188	9/19	10/3	
Franklin-Alexander	[illegible] (AFT)		8/26	9/3	Salary, distribution of raises.
Illini Bluffs	62 (AFT)		8/26	9/3	
Johnson City	69 (NEA)	1,442	8/25	9/3	
LaSalle Elem.	54 (NEA)	873	9/2	9/13	
Lena Winslow	57 (NEA)	1,090	9/15	9/18	
Litchfield	100 (NEA)	1,748	8/25	8/28	Salary. First contract.
McHenry Community College	55 (NEA)		8/23	8/27	Salary, fringes, grievance procedure.
Massac County	145 (NEA)	2,494	8/21	8/27	
Meridian	87 (NEA)	1,265	8/19	9/16	Basic contract.
Mt. Vernon Township H.S.	106 (NEA)	1,658	9/22	9/29	
Murphysboro	155 (NEA)	2,804	8/25	9/2	Health insurance, early retirement, prep time.
New Trier	312 (NEA)	5,292	10/1	10/10	
Olympia	138 (NEA)	2,608	8/21	8/25	
Park Forest Elem. 163	168 (AFT)	2,700	8/29	9/15	Salary, class size, insurance benefits.
St. Joe-Ogden	32 (NEA)	434	8/27	9/10	First contract.
Sherrard	86 (NEA)	1,650	9/30		
Thornton Township 205	435 (NEA)	8,900	9/4	9/17	Base pay, make-up days, amnesty clause.
West Chicago H.S. 94	80 (NEA)	1,540	9/10	9/16	
Wheaton-Warrensville	585 (NEA(	10,500	9/2	9/3	Salary, retirement, transfers.
MICHIGAN					
Ann Arbor	1,093 (NEA)	17,000	9/2	9/17	
Bangor	85 (NEA)	1,750	/17		
Bay City	500 (NEA(	12,140	9/2		School year calendar.
Benzie County General	78 (NEA)	1,880	9/2	9/5	
Bloomingdale	65 (NEA)	1,204	9/3	9/11	
Breitung Township	100 (NEA)	2,655	8/25	8/26	
Buckley	16 (NEA)	310	9/2	9/10	
Carrollton	117 (NEA)	1,750	8/27	9/2	
Comstock Park	72 (NEA)	1,559	10/6		Salary.
Covert	48 (NEA)	732	9/3	9/4	
East Jordan	67 (NEA)	1,178	8/28	9/22	
			9/25	9/26	
Elkton-Pigeon-Bayport	72 (NEA)	1,462	9/2	9/22	Returned without contract.
Grand Haven	306 (NEA)	5,700	9/2	9/21	
Grand Rapids	2,037 (NEA)	36,324	10/6		Salary.
Grand Rapids Northview	164 (NEA)	3,099	9/3	9/15	
Harbor Beach	56 (NEA)	1,105	9/8	9/15	
Hopkins	53 (NEA)	1,100	8/22	8/26	
Imlay City	96 (AFT)	2,460	9/22	10/14	Grievance procedure, sick leave policy, salary.
Jackson Career Center	46 (NEA)		9/2	9/8	
Kenowa Hills	146 (NEA)	3,171	9/8	9/26	
Kentwood	293 (NEA)	6,363	9/4	9/27	
Lakeshore	204 (NEA)	3,555	9/2	9/12	
Lapeer	347 (NEA)	8,795	9/2	10/2	
Lawton	52 (NEA)	1,000	9/8	9/9	Cost-of-living adjustment.
Mount Pleasant	232 (NEA)	4,400	9/2	9/19	
Munising	68 (NEA)	1,357	9/2	9/2	
Muskegon	530 (NEA)	8,274	9/2	9/21	

School District	Teachers Affected	Pupils Affected	Strike Date	Return Date	Issues
Muskegon Heights	174 (NEA)	3,184	9/2	9/24	
New Buffalo	63 (NEA)	1,175	9/8	9/25	
North View	164 (NEA)	3,100	9/3	9/15	
Otsego	120 (NEA)	2,750	8/25	9/2	
Paw Paw	96 (NEA)	2,177	9/2	9/18	Returned without contract.
Port Huron	700 (NEA)	14,200	9/15	9/24	Returned without contract.
Posen	28 (NEA)	417	9/22	9/29	
Rock River Township	22 (NEA)	455	9/2	9/12	
School Craft Community College	297 (NEA)	10,000	9/2	9/9	Back under court order.
South Haven	140 (NEA)	3,214	9/2	9/16	
MICHIGAN—Contd.					
Three Oaks River Valley	119 (NEA)	1,962	9/2	9/25	
Tuscola Intermediate	15 (NEA)	300	9/3	9/16	
Unionville-Sebewaing	69 (NEA)	1,196	10/1		
Wakefield	37 (NEA)	710	9/2	9/9	
NEW JERSEY					
Bradley Beach	50 (NEA)		9/18	9/18	
Deptford	335 (NEA)	5,200	9/23	9/23	
Franklin Township	(NEA)		9/4	9/4	
Hamilton Township	450 (NEA)	14,000	9/29	9/30	
Newark	5,500 (AFT)	61,000	9/3	9/8	Salary, COL, hours, protection of contract.
Pitman Township	170 (NEA)	2,000	10/3		
Saddlebrook	220 (NEA)	2,260	10/1		
Trenton	1,100 (NEA)	15,000	10/2	10/10	
Wall Township	220 (NEA)	4,000	9/15	9/22	Entire contract.
Weehawken	125 (NEA)	2,300	9/19	10/3	
NEW YORK					
Clarkstown	700 (AFT)	12,000	10/1	10/10	Salary, fringes.
L.I. University-Brooklyn Center	500 (AFT)		10/1		Parity with other campuses.
Nassau Community College	379 (AFT)		9/29	10/8	Salary, job security.
Plainedge, L.I.	250 (AFT)	1,500	8/4 9/18	8/5 9/19	Back under court order.
Rochester	2,700 (AFT)	50,000	9/2	9/11	Salary, length of day and year.
OHIO					
Boardman Local	303 (NEA)	5,250	9/8	10/15	Salary, dental insurance, transfer, reassignment, RIF, agency shop.
Hubbard	165 (NEA)	3,000	9/3	9/17	Salary.
Lake County TMR	129 (NEA)	450	9/8	9/12	Base salary, fringes, seniority rights.
Leonard Kirtz School for Mentally Retarded	86 (NEA)	290	9/3	10/2	
Madison	228 (NEA)	5,000	10/6	10/21	
Mahoning County TMR	86 (NEA)		9/3	9/30	
Miamisburg	234 (NEA)	4,585	8/26	9/20	Salary.
Newcomerstown	75 (NEA)		10/1	10/2	
Northeastern Local (Springfield)	216 (NEA)	4,000	8/25	9/5	
Warren Local (Marietta)	140 (NEA)	3,000	8/26	9/2	Entire contract.
PENNSYLVANIA					
Bangor	154 (NEA)	2,717	9/2	9/20	
Chambersburg	422 (NEA)	9,400	9/10	9/29	
Chester Upland	550 (NEA)	9,000	9/15	10/3	
Downington	370 (NEA)	7,500	9/4	10/3	Salary.
East Lycoming	100 (NEA)	1,944	9/3	9/12	
Easton	410 (NEA)	7,597	9/2		
Gateway	389 (NEA)	6,735	8/26	9/8	Back with arbitration.
Greensborough-Salem	240 (NEA)	4,679	9/3	10/20	
Hampfield Area	492 (NEA)	9,770	9/8		
Kutztown	113 (NEA)	2,112	9/4	9/8	Back with fact-finding.
Lampeter-Strasburg	118 (NEA)	2,233	9/3	9/10	
Meuhlenberg Township	174 (NEA)	2,743	9/2		
Moon	258 (NEA(	4,490	9/2	9/10	
Northampton Area	286 (NEA)	6,084	9/2	10/3	
Philadelphia	23,000 (AFT)	220,000	8/31	9/22	Salary, job security, rehire of teachers.
Plumborough	260 (NEA)	5,417	9/8	9/9	
Portage Area	78 (NEA)	1,500	8/25	9/15	
Shalor			9/5	9/8	Lockout.
Shade Central City	62 (NEA)	1,000	8/25	9/8	Back with fact-finding.
Southmoreland	148 (NEA)	3,150	9/15		Salary, evaluation, transfer.
Steel Valley	187 (NEA)	2,886	9/2	9/3	Back with fact-finding.

School District	Teachers Affected	Pupils Affected	Strike Date	Return Date	Issues
Stroudsburg	186 (NEA)	4,000	9/25		
Upper Bucks County Area Vo-Tech	36 (NEA)	1,050	9/2	9/23	Salary.
Upper Dauphin	94 (NEA)	1,679	9/3	9/10	
Wayne Highlands	167 (NEA)	3,091	10/1		
Whitehall-Copely	204 (NEA)	3,715	9/9	9/20	
Wilmington Area	90 (NEA)	1,800	9/29		
Yough	167 (NEA)	3,466	9/8		
RHODE ISLAND					
Cumberland	385 (NEA)	6,152	9/2	9/11	Salary, class size.
North Providence	200 (AFT)		9/3	9/7	Honored strike by Fed. of Educational Workers.
Westerly	230 (NEA)	3,450	8/25	9/29	Salary, COLA.
Woonsocket	525 (AFT)		9/2	9/10	Salary, prep time for elementary.
WASHINGTON					
Auburn	300 (NEA)	8,226	9/2	9/8	
Bellevue	1,170 (NEA)	20,240	9/2	9/22	Salary, fringes, planning time, class size, RIF procedure, extra duty.
Castle Rock	30 (NEA)	800	9/2	9/5	
Lower Snoqualmie	60 (NEA)	1,037	9/2	9/18	
PUERTO RICO					
Cidra	350 (AFT)	6,000	9/2	9/8	Transfer, firing of teachers.

BNA

ECONOMIC ISSUES

BUDGETARY LIMITATIONS

City and local governments across the country are facing financial crises again this year, brought on by rising costs and difficulties in raising revenue—taxpayer revolts, constitutional limitations, and declining tax bases. School districts appear to be especially hard-hit as attitudes toward bonds (a traditional way of funding school expenditures) become increasingly cautious. In collective bargaining, negotiators must address the staffing problems that result from declining enrollments as well as the general budget crunch. Following are developments in various school districts that have been forced to deal with budgetary problems that impact on teacher labor relations:

► Faced with an austerity budget, the Waterford, Michigan school district charged students $50 each to participate in extracurricular programs. Along with donations from the Waterford Booster Club, the fees funded a complete line of activities—perhaps enabling teachers to earn additional pay for extracurricular work. In related action, the school is seeking court action to reverse the state's decision to reduce funding to Waterford based on application of the School Aid Formula. A lower court's decision that it lacked jurisdiction in the case has been reversed and remanded (***Waterford School District v. State Board of Education, State of Michigan,*** Court of Appeals No. 51344, July 18, 1980).

► Teachers, administrators, and principals in Cincinnati, Ohio applied for unemployment and food stamp benefits after the schools were closed for three weeks because of lack of funds. The employees, who have not had a pay raise since May 1977, saw their applications as a demonstration to the public of the district's problems. School officials noted that loans were available to keep the schools open but that they could not afford the interest charges (*GERR* 677:25).

► Boston teachers ratified a three-year contract with the school board, but city officials predict that funding the new package may be a problem. While the proposed budget—with the pay increases—is $236 million, Mayor Kevin White intends to hold it to 195 million has has refused to allocate the additional funds. The conflict may mean a payless period for teachers sometime during the contract. The administration of the schools was further hampered when a board member was charged with extortion in an attempt to secure $650,000 from a firm in return for a guarantee of a $40 million busing contract (*GERR* 879:27).

► West Warwick, Rhode Island schools were closed in February when the district lacked the funds to pay its teachers. The closure came after the town council cut $1 million from the school budget whose fiscal year ended in February (*GERR* 848:21).

► Springfield, Illinois gave layoff notices to 190 teachers—one fifth of its staff—because of declining enrollments and uncertain funding. San Francisco also laid-off one-fifth of its staff (500 teachers) to help reduce the estimated $21 million deficit for the coming year. And the District of Columbia is considering a reduction of 700 in its teaching staff in order to meet budget restrictions (*GERR* 854:17).

► The Utah Supreme Court upheld the job termination of the Wayne High School guidance counselor and affirmed that the decision was due to declining student numbers—not that the counselor was president of the local teacher's union and its representative in bargaining (*GERR* 852:14).

► Chicago teachers agreed to keep working while the district worked out a plan to manage its fiscal crisis. Teachers had walked out earlier in the year when their paychecks had not arrived. The district also lacked the funds to pay Internal Revenue payroll taxes. The school board's problems are part of the general financial difficulties facing the city which stem from rapidly rising costs and a difficulty in raising revenue; property taxes, for example, have not been raised since 1971. The package being worked out to save the city's finances includes loans, new bond issues, tax anticipation warrants, and reductions in staff throughout city government (*GERR* 843:29, 846:18, 847:13).

► The Illinois Appellate Court held that Chicago principals could seek recovery of their salaries lost as a result of a four-week layoff imposed in 1977 to help meet the school's financial obligations. The case was remanded to the lower court (*GERR* 874:20, *Perlin v. Board of Education of the City of Chicago*, Ill. App. Ct., 1st District, No. 79-157, June 29, 1080).

► The Springfield, Massachusetts teachers' union plans to challenge any attempts to meet the budget restrictions of Proposition 2½ through layoffs. The new tax-cutting proposition, passed in the November 1979 election, is expected to reduce the school budget for fiscal year 1981 by $6 million. Because 80 percent of the budget goes toward salaries, cuts in personnel are expected. The union has a contract with the city through 1982 and maintains that staff cannot be cut until this contract expires. While state tenure laws allow layoffs for budgetary reasons, these layoffs may violate contract provisions for the remaining teachers—such as negotiated student-teacher ratios.

► The Frankfort, Kentucky board of education approved a tentative annual pay increase averaging $900 per teacher. The increase remains tentative pending the results of several tax appeals which will affect the size of the school budget (*GERR* 868:33).

REDUCTIONS IN FORCE

As evident from the previous section on budgetary limitations, school districts have been forced to deal with declining enrollments and budgetary constraints. Many districts have chosen often to make ends meet by laying off teachers and educational staff. Some school boards argue that these reductions in force (RIF) are the best way—sometimes the only way—to reduce expenditures.

School districts say that first, the vast bulk of any school budget goes toward salaries. The teaching staff is one of the few sources of educational expenditure that can be varied with the number of students in attendance (unlike building maintenance, for example, which must continue even if there are no students). Finally, teachers' unions at times object less strongly to reductions in force than to wage and salary decreases as a way of reducing expenditure.

Public school enrollments are expected to continue declining at least through 1983. The primary question involved in these RIFing is thus, who gets the pink slip?

Unions may prefer that reductions be made on the basis of seniority, and in many cases, this criterion has been agreed to in collective bargaining. The school boards, however, may have independent interests in the structure of layoffs—retaining those teachers with special competence or skills. In addition, layoffs based on seniority may erode the progress of affirmative action programs. A great number of minority employees have just recently been hired and therefore lack seniority—they would be the first to go.

A number of court cases have addressed the criteria for reductions:

► In making a reduction in force, the Alcester, South Dakota school board violated its own sequential RIF policy by failing to retain a tenured teacher in preference to one without tenure. The board's policy stated that a tenured teacher could only be bumped if it was necessary to maintain an existing program in the school—something that the board could not show. The court ruled that the school board must then abide by its own rules for layoffs (*Schnabel v. Alcester School District*, S.D. Sup. Ct., No. 12773, August 6, 1980).

► The RIF plan in Greater Latrobe, Pennsylvania included the elimination of one idustrial arts positions. One industrial arts teacher, however, also had certification in social studies and was transferred to teach in that department. He was not happy teaching social studies, though, and asked that his certification in it be removed. It was, and one year after the change he returned to industrial arts. The school then had one too many industrial arts teachers, so they laid-off one of the junior teachers in that department who subsequently brought suit against the school and its claim that he was dismissed because of declining student numbers. The court agreed, noting that the decline in student numbers and the necessary staff changes had taken place the previous year; this move was unrelated to the changing enrollment. The court ordered his reinstatement (*Hixon v. Greater Latrobe School District*, Pa. Commonwealth Court, No. 2166, June 6, 1980).

► Because attrition effects the number of layoffs required to meet a given budget, it should be calculated through the time when a RIF program is to begin. The court held that the school board cannot use a shorter period for its calculations because it would understate the number of vacancies and cause needless layoffs (*Moreland Teachers' Association v. Anna Kurze and Moreland Teachers' Association v. Richard L. Davis*, Cal. Ct. of Appeals, No. 47003 and 45095, August 28, 1980).

► Headstart teachers whose program changed sponsors were not guaranteed employment under a new administration. The teachers had been advised by Department of Health and Human Services officials that Headstart programs were usually transferred intact when sponsorship changed. After the move, however, the new administration decided that declining enrollments merited a reduction in force. The court held that the layoffs were valid, noting that the teachers were employees of the local agencies—not the federal government. The federal officials merely monitored program compliance and could not therefore make an oral contract with the teachers (*Olmstead v. Community Action Services of Morgan County, Inc.*, U.S. District Court for the Eastern District of Tennessee, No. 3-80-97, June 24, 1980).

► Michigan Court of Appeals reversed a county court's injunction against the Detroit school board's move to layoff 717 teachers and reduce classroom hours. After the decision, the board laid-off an additional 270 teachers, bringing the total to 987. The Detroit Federation of Teachers has appealed the decision to the Michigan Supreme Court (*GERR* 882:27).

WAGE GUIDELINES

The voluntary wage guidelines issued by the Council on Wage and Price Stability have had little influence on last year's teachers negotiations. Jim Ward, director of research for the American Federation of Teachers, told BNA that while the teachers unions ignored the guidelines, many school boards did not even know what the guidelines were. Ward noted that in a few instances, the boards have used the guidelines to restrain wages, "but in most cases this hasn't worked."

Labor won a majority victory in March when the Council exempted incremental increases from the guidelines. These increases had been a major problem for negotiators last year. Janice Murphy, assistant director for pay monitoring at the Council, noted that they had not done an extensive review of teacher contracts this year. But those reported as being over the guidelines usually contained incremental provisions that brought them into compliance.

Union officials were in agreement that budget restrictions and the financial health of the school districts were far more important this year than were the voluntary guidelines in shaping wage settlements (*GERR* 879:13).

* * * * *

Incremental pay increases for the period of the 1971 wage-price freeze were granted retroactively to teachers in Grand Blanc, Michigan by a Federal district court (*Grand Blanc Educational Association v. Grand Blanc Board of Education,* E.D. Mich., No. 74-4003, March 29, 1978).

SALARY DISPUTES

While fiscal crises and budget constraints made most of the headlines this year, the majority of salary disputes have centered around traditional problems of contract interpretation and the application of relevant statutes. Two state supreme court cases were particularly important in this area:

► The Illinois Supreme Court held that a school board may pay higher salaries to teachers who sign no-strike agreements. The agreements, the court said, were additional considerations which could justify additional pay. All public employees in Illinois are prohibited from striking by state law, however (*GERR* 880:24 *Bond v. Board of Education of Mascoutah Community Unit School District,* Ill. Sup. Ct. No. 52213, June 20, 1980).

► Pennsylvania's minimum salary formulas do require districts to pay no less than its minimum salaries, but they do not affect salaries for jobs paid above the minimum rate. An increase in the minimum, therefore, does not require a district to adjust is entire salary schedule upward (*Wildrick v. Board of Directors of Sayre Area School District,* Pa. Sup. Ct., No. 584, July 3, 1980).

Several cases considered the question of the length of the school year for purposes of salary determination:

► Pennsylvania's Commonwealth Court upheld an arbitrator's decision that a district is obligated to pay the salaries set out in its collective bargaining agreement with the teachers, even though the length of the school term was reduced because of a teacher's strike. While the agreement specified that per diem, pro rata reductions in pay could be made for unexcused absences, the court held that the parties did not intend for strike days to be counted as unexcused absences (103 *LRRM* 2468 *Forest Hills School District v. Forest Hills Education Association,* Nos. 1911 C.D. 1978, 1912 C.D. 1978, Sept. 13, 1979).

► After several emergency closures for inclement weather, the Orchard Park, New York school district added additional days on to the school year in order to qualify for attendance-based state aid. But the "snow days" must be counted as days worked under the terms of the district's agreement with the teachers, the court ruled, and that placed the actual number of days worked over the contractual maximum. The teachers were therefore entitled to extra pay according to the schedule for additional service set out in the collective bargaining agreement (*GERR* 849:17 *Orchard Park Teachers Association v. Board of Education of Orchard Park Central School District,* N.Y. Sup. Ct. App. Div., No. 666 1979, Nov. 16, 1979).

► Part-time employees of the Whitehall, New York school district were not eligible for additional compensation when snow days extended their school year beyond the guaranteed minimum. In this case, the court held that snow days were only counted in the employees' contract as contributing toward their minimum work year; they were not intended to be a source of additional compensation (*Goff v. Whitehall Central School District,* NY Sup. Ct. App. Div., No. 36751, July 3, 1980).

The following decision and settlements cover a wide range of contractual questions:

► Teachers who had just reached eligibility for a contractual longevity pay increase sought relief from the courts when that longevity clause was abolished in collective bargaining that same year. The teachers argued that they had a vested right to the increase, but the court held that benefits secured through collective bargaining could also be eliminated through bargaining (*Rouse v. Anchorage School District,* Alaska Sup. Ct., No. 4715, June 20, 1980).

► Scheduling faculty meetings outside of the regular school day did not violate the terms of the district's contract with its teachers. The contract merely specified limits to the hours for normal and regular instruction, the arbitrator ruled, and had no bearing on the schedule outside of those hours (*In re Ellenville School District and Ellenville Teachers Association,* 74 *LA* 1221, Arb. Peter Sertz, AAA Case No. 1939022779, February 19, 1980).

► Day care centers meet the criteria for coverage under the Fair Labor Standards Act because their main function is to provide learning opportunities—even though they may lack some of the characteristics of schools, such as certified teachers (24 *WH Cases* 524, *United States v. Elledge,* CA 10, No. 79-1164, Jan. 21, 1980).

► Minneapolis, Minnesota teachers received an arbitration award granting a 17 percent increase in salary and benefits over the next two years. The award came in time to avert a strike (*GERR* 848:21).

PENSIONS

The decline in the stock market earlier in this fiscal year reduced the value of many pension funds, including those for public school teachers. Missouri State Auditor James Antonio noted that the two pension funds for Missouri teachers lost $64,000,000 in the fiscal year ending June 30, 1980, which could have a serious effect on the ability of the funds to pay benefits. But the paper losses were attributed to the especially volatile behavior of the market this summer and are expected to be recovered.

New contracts have been signed across the country that bring about changes in pension programs:

► Units of the Illinois Education Association (NEA) in Olympia and Alton have won employer-paid pension benefits after a three-day strike.

► Teachers in Springfield, Oregon have signed a three-year contract which requires the school board to pay the employees' contribution to the Public Employees' Retirement System (PERS). The contribution amounts to 6 percent of each teacher's salary.

Recent court cases have addressed the interpretation of length of service criteria in establishing pension rights:

► A worker found to have sufficient service and awarded benefits had his pension withdrawn after additional information was presented that showed his length of service to be insufficient. The court held that it was proper for the pension board to correct its error and to seek return of the benefits paid (*Galanthy v. New York State Teacher's Retirement System,* NYS Ct. of Appeals, No. 377, June 26, 1980).

► Payment of a pension based on an incorrect assessment of service does not prohibit the recipient from seeking a correction—even if the complaint was raised after the deadline set under agency law. A Pennsylvania court held that the payments made did not constitute an adjudication and dismissed objections to the complaint (*Neff v. Trustees of the Public School Employees' Retirement Board of Pennsylvania,* July 17, 1980, Pa. Commonwealth Ct., No. 1072).

► Death benefits payable to teachers "in service" are not payable to a teacher who died before the school year began. The court held that the teacher had not yet begun her service with the school before her death (*Sherman v. New York State Teachers' Retirement System,* NYS Ct. of Appeals, No. 379 JUne 26, 1980).*

► A disability pension is due a 61-year-old Florida teacher who suffered a stroke after being physically and verbally abused by his students. A Florida court ruled that the stroke was brought on by incidents in the classroom and was therefore an in-the-line-of-duty disability.

► A teacher who was dismissed for cause following indictment for selling child pornography had his pension reinstated by a New York court. The teacher filed for retirement and pension benefits after his indictment but before his dismissal. The school board withheld the pension, arguing that they require a 39-day notice of retirement and that within this period the claimant was dismissed for cause—making him ineligible for a pension. The court held, however, that the 30 day notice was a courtesy to the board and not mandatory.

WORKERS' COMPENSATION

The following court opinions deal with workers' compensation issues:

► A high school football referee is entitled to workers' compensation benefits from the school district after injuries received while officiating a league game. The court held that the referee was in fact an employee of the district because the school scheduled both the time and place of the games in advance as well as providing compensation for its referees (*Ford v. Bonner County School District,* Idaho Sup. Ct., No. 13299, June 12, 1980).

► A school board did not waive its statutory right to reimbursement in worker's compensation cases by entering into a contrary agreement with its teachers. Even though the agreement stated that the board would continue to pay full salary and benefits, the court held that it was not intended as a contractual waiver of the board's right to be reimbursed the difference between regular salaries and those allowed under worker's compensation (*Adolf v. City of Buffalo Board of Education,* NYS Ct. of Appeals, No. 252, June 3, 1980).

► Claimants appealing a decision to terminate their worker's compensation payments cannot then file a disability claim (the initial step in a compensation action) for that same injury currently on appeal, a Pennsylvania court ruled. The purpose of such a claim, the court said, is to establish whether an injury is compensable. In this case, the employer had acknowledged as much and had been making payments, so there were no grounds for filing a disability claim. If processed, it would constitute a second look at the case currently under appeal (*Grasha v. Commonwealth of Pennsylvania Workmen's Compensation Appeal Board,* Pa. Commonwealth Court, No. 1540 C.D. 1979, April 24, 1980).

UNEMPLOYMENT INSURANCE

The following court opinions deal with the unemployment insurance issues:

► Teachers placed on a district's active substitute list are still eligible for unemployment benefits, according to the Minnesota Supreme Court. While assured that they would be called to perform services in the next employment period, the teachers were not assured that those services would "approximate and approach those of their previous employment." And that, the court held, is the criterion for eligibility. The decision was reversed and the case remanded for further evidence (*Johnson v. Independent School District of Rochester, Minnesota,* Minn. Sup. Ct., April 4, 1980).

► Substitute teachers are not eligible for unemployment insurance benefits when full-time teachers are engaged in a work stoppage, a Pennsylvania court ruled. The court noted that by Pennsylvania statute, workers are ineligible for benefits if they are of the same grade or class as those striking. Because substitutes replace regular teachers and perform the same functions, the court held that they were of the same work grade and therefore ineligible for benefits (*Renne v. Commonwealth of Pennsylvania Unemployment Compensation Board of Review,* Pa. Commonwealth Ct., No. 1808 C.D. 1978, June 26, 1980).

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Work-loss benefits of no-fault automobile insurance can only be paid if an accident actually causes the claimant to lose time from work, the Michigan Attorney General stated. And this would not be the case for teachers who were disabled during the summer when they would otherwise be on vacation (Frank J. Kelly, Attorney General of the State of Michigan, Opinion No. 567, April 1, 1980).

► A teacher whose job was eliminated in a RIF program was still eligible for unemployment benefits even though placed on the school's list of active tutors. The court ruled that the need for these home tutors was so infrequent that merely being on the list did not constitute a "reasonable assurance of employment," and did not disqualify one from eligibility (*Maas v. Ross,* NYS Sup. Ct., App. Div., No. 37501, July 24, 1980).

LEGAL DEVELOPMENTS

AGENCY FEES AND DUES CHECKOFF

In 1977, the U.S. Supreme Court in *Abood v. Detroit Board of Education (GERR* 710:11,33) upheld the constitutionality of agency shop fees covering public employees.

However, as evidenced by the *Special Reports* the last two years, *Abood* was not the definitive word on all agency fees and dues checkoff issues. In 1979-80, courts continued to grapple with the question of whether union dues can be collected through regular paycheck deductions:

► The Connecticut Supreme Court ruled that the Hartford Federation of Teachers properly collected union dues through regular paycheck deductions. Overturning a lower court decision holding that the agency shop clause was illegal both under state and federal laws, the court ruled that the clause was illegal both under state and federal laws, the court ruled that the clause was valid as a proper exercise of public policy, even though it violated Connecticut law when it became part of the teachers' contract. The agency shop clause became effective October 1, 1979. *(GERR* 863:21, *Gloria M. Dowaliby, v. Hartford Federation of Teachers;* Conn. Sup. Ct., *Connecticut Law Journal,* p. 13, May 6, 1980).

► The Michigan Court of Appeals held that a tenured teacher could be fired for refusing to pay union shop dues provided that Constitutional and statutory procedural due process requirements of notice and opportunity to be heard are met. In this case the court found the hearing limited to the factual question of what amount of dues were owed unnecessary because the employee admitted her refusal to pay the dues. (*GERR* 871:15, *Board of Education v. Parks,* Mich. Ct. of App., Nos. 46812, 78-3515, 78-3517, June 3, 1980).

► A New York court held that the validity of an agency shop fee deduction provision does not depend on the extent of the negotiations leading to the agreement. (*McAulay v. Board of Education of the City of New York,* 403 N.Y. 2d 116, *aff'd* 421 N.Y. 2d 560, 1979).

► Where a Kansas statute designated one union as exclusive negotiator of teacher contracts, a rival union was still entitled to dues checked off from the paychecks of its own members, the Kansas Court of Appeals ruled, because the deduction procedure was merely a service provided to the employees that did not interfere with the selection of official negotiating union. (105 *LRRM* 2276, *National Education Association—Wichita v. Unified School District 259,* No. 50554, March 21, 1980).

► A Massachusetts court has held that teachers cannot be fired until there has been a judicial determination of what dues are owed. Further, the court set up a special court-controlled escrow account for the payment of compulsory fees by nonunion members who complained that the funds were used to promote political views which they did not support. (*GERR* 877:20, *Greenfield School Committee v. Greenfield Educational Association,* Mass. Superior Ct., No. 14646, July 31, 1980).

► A California court of appeal ruled that neither an individual employee nor a rival union is permitted under law as a "real party in interest" to contest an election concerning recision of an "organizational security," or agency shop agreement. (*Bissell v. Public Employment Relations Board,* Calif. Ct. of Appeal, August 28, 1980).

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In Wisconsin, an arbitrator has approved a provision proposed by the faculty association of the Northeast Wisconsin Vocational, Technical and Adult Education District calling for all employees to pay a fee representing the "full fair share" of the costs of the association's representation. The arbitrator noted that fair share agreements constitute established legislative policy. (*GERR* 862:24, May 19, 1980).

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Standing by its earlier ruling, which was upheld by a state superior court, the Washington State Public Employment Relations Commission denied exemptions to union dues in three different cases where the employee's objections were found not based on specific tenets of a church or religious body of which the employee was a member. The commission ruled that personal beliefs, however strongly held, do not entitle an employee to make payments to a non-religious charity as an alternative (*GERR* 882:18, October 6, 1980).

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In an important legislative development in this area of the Pennsylvania state Senate passed an agency shop bill in July 1980 that would make payment of dues to the organization selected as exclusive bargaining agent compulsory by all public employees (including employees of nonprofit organizations) at the option of the union. The bill contains a narrow exemption for adhering members of a "bona fide" religions group which traditionally teaches against the financial support of labor unions. Those exempted must make alternative payments to a nonreligious charity. To qualify as an agency shop an employee organization must establish a procedure to refund, on demand, a proportion of the fees representing expenditures of a political or ideological nature unrelated to collective bargaining or employment terms and conditions. (*GERR* 877:13). Sent to the House State Government Committee, the bill is still pending in the House as of October 1, 1980.

DISCIPLINE, DISCHARGE, AND TRANSFER

Discharge

Dismissal and nonrenewal of teacher contracts created perhaps the greatest volume of litigation of any aspect of education labor relations in 1979-80.

Significant cases are highlighted below:

Federal Court Cases

► In the most significant teacher discharge case this year, the U.S. Court of Appeals for the Sixth Circuit ordered a lower federal court to reinstate with backpay a teacher whose contract was not renewed on the basis of recommendations by the principal and superintendent stemming from animosity over the teacher's union activities. Applying the Supreme Court's test in *Mt. Healthy City Board of Education v. Doyle* (*GERR* 691:10, 24), the court determined that the stated reasons for nonrenewal, personality conflict with the principal and declining performance evaluations after the superintendent had decided to "document the case for nonrenewal," were inextricably linked to their reactions to the teacher's union activities, and that the school board did not prove that they would have voted for nonrenewal even if the teacher had not engaged in the protected conduct. There was no showing that the school board was insulated from the principal and superintendents' rationale which had been predicated upon constitutionally impermissible reasons, which in turn became the bases for the board's decision, the court held. (*GERR* 862:26, *Hickman v. Valley Local School District Board of Education,* CA 6, No. 79-3226, April 23, 1980).

Lower federal court casses follow:

► A teacher who was informed following a school board meeting that her contract would be terminated due to parent complaints concerning her strict teaching methods, denied a list of the charges against her or the opportunity to refute them, and ordered to follow an ambiguous plan of improvement which did not place her on notice of specific proscribed conduct but required her to surrender her First Amendment rights, was held by a Missouri federal district court to have been denied her constitutional due process right to notice and a hearing, which was not satisfied by the post-termination hearing provided under state law. (*Cantrell v. Vickers,* N.D. Mo., No., EC-79-97-05-P, Aug. 7, 1980).

► A federal district court sitting in Minnestoa ruled that a school superintendent whose contract was not renewed had no due process right to a pretermination hearing because he was a probationary employee with no legitimate claim of entitlement or reasonable expectation of continued employment arising from an express or implied contract based upon an offer of renewal elicited from the school board by the superintendent with the knowledge that the board intended not to be bound by the offer, which the employee failed to accept in a definite and unequivocal manner. (*Tatter v. Board of Education of Independent School District,* D. Minn., Civ. No. 6-78-212, June 13, 1980).

► Lamenting the lack of a uniform statute of limitations setting a deadline for filing civil rights suits in federal court, a U.S. trial court in Kentucky ruled that a suit brought by a teacher for nonrenewal of contract based on allegations of drug use and sexual misconduct which became public was barred by the state suit one year limit for bringing a libel suit, the type of state suit which most closely resembled the teacher's claim that she was wrongfully denied a hearing to clear her name. (*Hines v. Board of Education of Covington, Kentucky*, E.D. Kent., No. 77-157, July 3, 1980).

State Supreme Court Cases

Five noteworthy state supreme court cases listed below reverse school board dismissals of teachers:

► The Montana Supreme Court overruled a school board decision not to rehire a nontenured teacher which was based on the "tainted evaluation" by a principal who disapproved of the teacher's union activities, where, despite the board's arguably having a separate, permissible motive for the nonrenewal, a state hearing examiner had correctly determined that the teacher would not have been discharged "but for" her union activities. (103 *LRRM* 3090, *Board of Trustees of Billings School District v. State of Montana*, No. 14722, Dec. 21, 1979).

► Under Vermont law and the principles of due process, the school district has the burden of proving at a hearing of the school board that there is "just and sufficient cause" not to renew a nontenured teacher's contract, the Vermont Supreme Court held, sending the case back to the trial court to decide the teacher's claimed issues of fact. (*Burroughs v. West Windsor Board of School Directors*, No. 208-78, Sept. 8, 1980).

► The discharge of a high school principal for fraud, consisting of intentionally double billing driver education students, was reversed by the Minnesota Supreme Court as unsupported by the entire record, ordering the board to reinstate the principal and advising it to employ a hearing examiner in future termination proceedings to insure fundamental fairness. (*Liffrig v. Independent School District, Oslo*, No. 446, March 7, 1980).

► The Supreme Court of Colorado upheld a jury verdict awarding reinstatement to a teacher on the grounds that his union activities constituted a substantial or motivating factor in the school board's decision not to renew his contract and that the board would not have made the decision had it not considered the teacher's constitutionally protected activities, striking down the trial judge's judgment for the school board not withstanding the jury verdict. (*Durango School District v. Thorpe*, No. 79SC9, July 21, 1980).

► The Tennessee Supreme Court ruled that the absence of any persuasive testimony that a tenured kindergarten teacher's performance was below the standards of efficiency maintained by other kindergarten teachers and the fact that the teachers alleged tardiness occurred within duty period demonstrated that the evidence of inefficiency and insubordination was insufficient to justify firing the tenured teacher. (*Williams v. Pittard*, Sept. 8, 1980).

State supreme court cases approving school board decisions to discharge teachers are considered below:

► The Alaska Supreme Court ruled that a nontenured teacher had no constitutionally protected interest in continued employment, but was entitled to limited judicial review of the record of the school board hearing at which the decision was made not to renew the teacher's contract for poor teaching performance and attitude, but that the school board decision was not shown to be "arbitrary and capricious." (*Shatting v. Dillingham City School District*, No. 2177, Sept. 26, 1980).

► There was substantial competent evidence to support the discharge of a tenured teacher on the grounds set forth by the Minnesota law relating to teacher tenure, the Minnesota Supreme Court held, ruling that a school board's decision to discharge the teacher for a second wrongful use of sick leave was a permissible exercise of its power to manage the school district. (*Anderson v. Independent School District*, No. 225, May 16, 1980).

► A nontenured high school mathematics teacher did not meet her burden of overcoming the presumption that the school board acted in good faith in deciding not to renew her contract due to incompetency, the Supreme Court of South Dakota ruled, holding that the nonrenewal was not arbitrary, capricious, or an abuse of the school board's discretion and was supported by substantial, credible evidence. (*Busker v. The Board of Education of Elk Point Independent School District*, No. 12609-r-FEH, July 23, 1980).

► The Nevada Supreme Court ruled that a principal's failure to admonish a nontenured teacher and provide a reasonable time for her to improve as required by state law before recommending that she not be reemployed was unimportant because the teacher did not timely request a hearing and voluntarily submitted her resignation after receiving the principal's notification that she would not be recommended for a new contract. (*Carson City School District v. Burnsen*, No. 11278, March 28, 1980).

► The Supreme Court of Wyoming declined to substitute its own judgment for that of a school board which voted to dismiss an industrial arts teacher where there was substantial evidence to support the board's finding of insubordination, which the board could reasonably have reached on the basis of all the evidence that the teacher willfully refused to obey a reasonable order of the principal given with proper authority, thereby reversing the lower court's order to reinstate the teacher. (*Board of Trustees of School District, Big Horn County v. Colwell*, No. 5215, May 19, 1980).

► A teacher's aid who was fired by a school board for refusing to accept an assignment she felt unqualified to perform was not denied due process, the Idaho Supreme Court ruled, finding that two meetings with the employee's principal and a telephone conference with the superintendent satisfied the constitutional requirements for notice and an opportunity to be heard. (*Simmons v. Board of Trustees of Independent School District*, No. 13120, September 3, 1980).

Arbitration Cases

Two arbitrator's decisions interpreting permissible grounds for dismissal under collective bargaining agreements are analysed below:

► A male teacher in a correctional facility twice accused of sexual misconduct with teenage female students was found by an Ohio arbitrator to have been properly discharged on the basis of defaults in behavior which demonstrated an incompetence or fool-hardiness and lack of responsibility justifying termination. (*GERR* 869:17, *Board of Education, Cincinnati and Cincinnati Federation of Teachers*, FMCS No. 80K/08387, April 18, 1980).

► A Wisconsin arbitrator reversed the dismissal of an agricultural teacher for failure to maintain discipline in the classroom due to the lack of any clear and unmistakable warning that he would be terminated unless he improved, but found just cause for some measure of discipline, and ordered the withholding of a one year experience increment as contemplated by the collective bargaining agreement. (73 *LA* 697, *In re School District of Colfax and West Central Education Association*, Sept. 12, 1979).

State Appellate Cases

Following is a list of middle-tier appellate cases on various aspects of teacher discharge, classified by state. The full text of the opinions are available from BNA.

California

American Federation of Teachers v. Board of Education of the Pasadena United School District, Daily Journal D.A.R. 1806 (Calif. 2d, June 30, 1980).

California Teachers Association v. The Governing Board of the Middletown Unified School District, (Calif. 1st, No. 1 Civ. 45253, March 19, 1980).

Illinois

Alexander v. Fair Employment Practices Commission of the State of Illinois (Ill. Ap. 4th, No. 1511, April 25, 1980).

Board of Education of School District No. 131 v. Illinois State Board of Education (Ill. App. 2d, No. 79-29, April 1, 1980).

Indiana

Salem Community School Corporation v. Richman (Ind. App. 2d, No. 2-876-A-282, June 17, 1980).

State of Indiana ex rel. Newton v. Board of School Trustees of the Metropolitan School District of Wabash County (Ind. App. 2d, No. 3-878 A 196, May 14, 1980).

Kansas

Unified School District, Wilson County v. Dice (Kan., No. 51, 133, June 14, 1980).

Massachusetts

South Middlesex Regional Vocational Technical School District Committee v. Superior Court (Mass. App. Ct. Adv. Sh. 1980, p. 503, March 12, 1980).

Superintendent of Belchertown State School v. Civil Service Commission (Mass. App. Ct. Adv. Sh. 1980. p. 1015, May 20, 1980).

Missouri

Hughes v. Board of Education, Charleston Reorganized School District (Mo. App. S., No. 11294, May 12, 1980).

Willett v. Reorganized School District of Osage County (Mo. App. W., Nos. 31122-31180, July 8, 1980).

Wolf v. Personnel Advisory Board of the State of Missouri (Mo. App. W., No. 30815, June 9, 1980).

New Mexico

Gallegos v. Las Lunas Consolidated School Board of Education (N.M. App., No. 4427, August 14, 1980).

New York

In the Matter of Geneva Jackson v. New York State Division of Human Rights (N.Y. Sup. Ct. 1st, No. 7741, 7492, 7493, April 4, 1980).

In the Matter of Jeseph Zurlo v. Amback (N.Y. Sup. Ct. 3d, No. 36805, April 3, 1980).

North Carolina

Weber v. Buncombe County Board of Education (N.C. App., No. 7928 SC 928, May 20, 1980).

Pennsylvania

Arnold v. Pittsburgh Board of Public Education (Pa. Comm. Ct., No. 2100 C.D. 1979, June 24, 1980).

Belle Vernon Area School District v. Gilmer (Pa. Comm. Ct., No. 1635 C.D. 1979, May 30, 1980).

Clarton School District v. Strinich (Pa. Comm. Ct., No. 952 C.D. 1979, April 9, 1980).

Gobla v. Board of School Directors of the Crestwood School District (Pa. Comm. Ct., No. 955 C.D. 1979, May 27, 1980).

Graham v. Mars Area School District (Pa. Comm. Ct., No. 651 C.D. 1978, June 10, 1980).

Lesley v. Oxford Area School District (Pa. Comm. Ct., No. 1828 C.D. 1977, Oct. 1, 1980).

Swartley v. The Norriston Area School District (Pa. Comm. Ct., No. 140 C.D. 1979, May 2, 1980).

Warren County School District v. Carlson (Pa. Comm. Ct., No. 1449 C.D. 1979, Aug. 27, 1980).

Discipline

A divided U.S. Court of Appeals for the Sixth Circuit reversed an earlier district court ruling that a school principal did not intend to violate a teacher's constitutional right of free expression when the teacher was reprimanded for his zealous advocacy as a union spokesperson of a fellow teacher's complaint. The court found the teacher's reprimand was predicated on constitutionally protected activity and that the school district failed to prove that its interest in the efficient administration of education outweighed the plaintiff's free speech and association rights. (*GERR* 872:19. *Columbus Education Association v. Columbus City School District,* CA 6, No. 77-3613, May 30, 1980).

► The U.S. District Court for the Middle District of Florida denied the request by two teachers for a preliminary injunction against the school board to enjoin the board from suspensioning the teachers without pay pending a trial. The Court concluded that the board would likely succeed with the case on its merits on the grounds that the teachers did not show enough irreparable harm to outweigh the disservice to the public interest that the injunction would create. (*Baker v. School Board of Marion County, Florida,* M.D. Florida, No. 80-30-Civ-Oc, March 10, 1979).

► The Illinois Supreme Court affirmed an appellate court holding in a teacher's behalf that he could not be suspended by the school board for cursing at a student during football practice because the board did not adopt a rule authorizing the suspension of teachers. (*Craddock v. Board of Education of Annawan Community Unit School District,* No. 52415, May 22, 1980).

► The Commonwealth Court of Pennsylvania affirmed an order by the secretary of education upholding an employee's demotion from the position of education director to the position of teacher at the Scranton State School for the deaf on the grounds that as a non-teacher at the school, the employee had no statutory entitlement to a hearing before being demoted, a hearing the petitioner claimed she did have a right to. The employee relied on a section of the school code providing for no demotion of a professional employee in a school district without first affording the employee a hearing. However, the court noted that the employee was not in a school district, but rather an employee of a state institution. (*Barrett v. Commonwealth of Pennsylvania, Department of Education,* No. 1060 C.D. 1979).

► The Commonwealth Court of Pennsylvania affirmed an order by the secretary of education that an employee be restored the duties of head administrator to the employee's job description after the employee was demoted by the school. The Court ruled that the employee filed his appeal within the statutory limit of 30 days of the receipt of written notice of the school's decision, that the relative standing of the employee's old and new position did constitute a demotion, and that the school failed to show justification for the demotion. (*Jefferson County-DuBois Area Vocational-Technical School v. Horton,* No. 1250 C.D. 1979).

► A school board properly issued a written reprimand to a biology teacher for allowing graffiti to be carved into classroom desks and permitting a state of disarray in the classroom, Arbitrator George T. Roumell, Jr., ruled. While the teacher claimed the graffiti appeared on a date when he was not teaching the class and another class was using part of the room, the arbitrator noted that occasional graffiti does not explain the substantial amount present, the teacher's cleanliness problem was not present to the same extent in other rooms, and that the written reprimand in an attempt to correct the problem was a modest corrective discipline. (74 *LA* 303, *Napoleon Board of Education and Jackson County Education Association,* AAA Case No. 54 39 0894 79, March 1, 1980).

► Arbitrator Samuel S. Perry ruled that a school employer did not violate a collective bargaining agreement when the director of vocational education, upon observing a female teacher wearing pants instead of skirts and dresses required by the dress code, talked to the teacher in private and asked her if she understood dress expectations. The ruling was notwithstanding the teacher's contention that the employer's action was a form of discipline that was imposed in retaliation for a discrimination charge that she filed with the civil rights commission because no discipline of any kind was administered by the director during the incident. (73 *LA* 382, *Columbus Board of Education and Columbus Education Association,* AAA Case No. 52 39 0736-78, August 23, 1979).

► A school board made a fatal error disciplining a teacher for alleged disruptive activities based on statements from students without providing the teacher an opportunity to cross-examine those students, Arbitrator Theodore H. Ghiz ruled. Based on statements from students, the teacher was discharged and transferred for allegedly telling the students to turn in false alarms, throw food in the cafeteria, and harass substitute teachers on the day of a teachers protest. However, the board denied the teacher her right to confront the witnesses against her, the arbitrator found, and ordered the teacher reassigned to her former position while directing the board to remove from her file all information regarding the transfer. (*GERR* 836:9, *Jefferson County Board of Education and Jefferson County Teachers Association,* FMCS No. 79K16583, August 27, 1979).

► A school board improperly issued a reprimand to a teacher who was on sick leave through the starting date of a two-week leave that she took to join her husband at a convention, which she took despite the denial of an earlier request for leave and a threat of reprimand if she took it, Arbitrator George T. Roumell, Jr., ruled. According to the arbitrator, the employee's sick leave would have continued at least through the starting date of the leave and the teachers absence on the day was due to illness and not misconduct. However, the employee was not entitled to sick leave pay for the duration of her trip in light of evidence that she behaved in perfect health. The reprimand was ordered removed from the teacher's file, but the request for sick leave pay was denied. (73 *LA* 952, *Saginaw Township Board of Education and Saginaw Education Association,* AAA Case No. 5439010479, November 9, 1979).

Transfers

The transfer of school employees frequently comes into conflict with collective bargaining agreements and state statutes. The following decisions address these issues which were heard on appeal:

► The Chicago school board is bound by its memorandum of understanding with its principals which states that candidates for transfer to lower grades must be presented in writing with specific reasons for that transfer. The board failed to do so; therefore the candidates so transferred may seek rescession of the transfers and the consequent loss of pay. (*Chicago Principals' Association v. Board of Education of the City of Chicago,* Illinois Appellate Court No. 78-72, May 21, 1980).

► A principal who was transferred to a position of reduced responsibility and prestige cannot claim that it was a demotion, because the new position also carried a higher salary. Georgia state law requires that all three be reduced—responsibility, prestige, and salary—in order for a transfer to count as a demotion. (*Rockdale County School District v. Weil,* Supreme Court of Georgia, No. 3582, April 22, 1980).

► A teacher reassigned after his sabbatical leave can be forced to return his sabbatic benefits after refusing to teach under the new arrangements. The teacher had been working in an elementary school and a junior high was reassigned to teach in two elementary schools. The court held that the new assignment—teaching in elementary schools—was, in fact, something that he had been doing before and therefore not in violation of state law prohibiting transfers after sabbaticals. (*Dinberg v. Oil City Area School District,* Commonwealth Court of Pennsylvania, No. 1700 C.D. 1979, June 30, 1980).

► The Denver school system violated provisions of its teachers' contract by using a transfer as a punitive action. A teacher had been transferred to another school after a lunch room altercation between the teacher and a student. (*Denver Public Schools and Denver Classroom Teachers' Association,* 73 *LA* 918, arb. Robert G. Meiners, November 9, 1979).

► The Tennessee Supreme Court upheld the transfer of a principal who had assigned a non-certified instructor to teach a required course without informing the school's administration. Evidence of prior difficulties between the principal and the administration was introduced in the lower court, but it was held as admissible given that the school had to counter allegations concerning its "arbitrary" relationship with the plaintiff. (*Eldridge v. Carter,* Supreme Court of Tennessee, June 9, 1980).

► A broadcasting technology instructor who managed the school's radio station was removed from both positions and transferred as an electronics instructor. The change was affected without diminution in pay or tenure status, but the court held that the instructor could seek recompense for damage to his reputational interest given his allegation that the transfer resulted from his editorial statements at the station. (*Lemons v. Morgan,* No. 79-2074, September 19, 1980).

► Following a high school's transfer to a new building, its principal was transferred to the same position at one of the district's middle schools. Although the salary was maintained, the duties were reduced. The principal claimed that the transfer was actually a demotion. Under state law, demotions can only be made after a hearing, which the principal was denied. While agreeing with the lower court's decision that under the law the transfer was not a demotion, the court held that the facts of the case were also relevant and should be considered by the lower court in determining whether the transfer actually constituted a demotion. The decision denying the principal's claim was reversed and the case remanded. (*Dolloff v. School Committee of Methuen,* Massachussetts Appellate Court, No. 671, April 3, 1980).

The Supreme Court of New Jersey affirmed the decisions of the lower courts that in the absence of an agreement between two schools, tenured teachers transferred from one school to another do not have to be treated as though they had been tenured by their new school district. *(In the Matter of the Closing of Jamesburg High School, School District of the Borough of Jamesburg, Middlesex County,* Supreme Court of New Jersey, No. A-81/82, July 25, 1980).

EVALUATION

Because evaluations of teacher performance are crucial to continued employment and professional advancement, teachers often contest evaluation procedures that result in unfavorable ratings or which in their opinion could lead to unsatisfactory results.

The following court decisions and arbitration ruling approved evaluation procedures leading to the nonrenewal of a teacher's contract:

► The Nevada Supreme Court ruled that a school district's failure to admonish a teacher for unsatisfactory permformance and provide a reasonable opportunity to improve in a letter of nonrenewal to the teacher, as required by state law, did not justify reinstating a teacher who did not make a timely request for a hearing and voluntarily submitted her resignation after being notified that she would not be recommended for renewal. (*Carson City School District v. Burnsen,* 96 Nev. Adv. Opinion 79, March 28, 1980).

► The findings of a New York Board of Examiners which enumerated specific deficiencies of an assistant principal they rated unsatisfactory, which were upheld by the Commissioner of Education, must be affirmed as having a rational basis, a New York Supreme Court ruled. (*In the Matter of Gloria L. Johnson v. Ambach,* No. 36773, March 27, 1980).

► An Ohio arbitrator ruled that the evaluation procedure of a high school personal guidance counselor which included the evaluators' meeting with the counselor at least five times to review performance and work product, and make constructive criticisms and written job targets satisfied the collective bargaining agreement requirement of four personal observations making the counselor aware of deficiencies and the opportunity to meet evaluators' goals and demonstrate improvements. (75 *LA* 177, *In re Board of Education of Cincinnati and Cincinnati Federation of Teachers,* No. 79K/15229, June 6, 1980).

► A high school band director who was informed in accordance with school board policy before April 1st that his contract would not be renewed for the following school year had no constitutional property interest in continued employment to permit him to complain that the school board had violated it's own policies in failing to review parent and student complaints with him before refusing to re-employ him, a Texas court of appeals ruled. (*Bowen v. Calallen Independent School District,* Texas Court of Civil Appeals, 13th District, June 12, 1980).

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Teacher evaluation procedure constitutes a "term or condition of employment" which a school board is required to discuss with the teacher union before unilaterally implementing a new evaluation method, the Indiana First District Court of Appeals ruled. (102 *LRRM* 2872, *Evansville—Vanderburgh School Corporation v. Roberts,* No. 1-79-A-13, July 26, 1979).

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The Knoxville Education Association has voiced its strenuous opposition to a school board teacher evaluation proposal introducing broad overall rating of "meets requirements" or "unsatisfactory" and six specific possible recommendations including the freeze of salary at step level, without reference to tenure, if improvement is deemed needed. The union has announced its intention to sue the school board if any teacher's salary level is actually frozen.

LICENSING AND PROFESSIONAL STANDARDS

Requirements and Procedures

A U.S. District Court in New Jersey upheld the constitutionality of New State regulations attacked by New Jersey teachers and education associations instituting oral examinations that tested proficiency in Spanish and English to certify bilingual teachers. The judge ruled that teachers had no right to tenure or continued employment in bilingual education that would trigger constitutional due process requirements, and that the exams gave applicants a fair and reasonable opportunity to demonstrate bilingual skills and were rationally related to the state's interest in providing its students with competent, well-trained teachers. (*New Jersey Education Association v. Burke,* SD NJ Civ. No. 76-2230 (unpublished), April 29, 1980).

The Commonwealth Court of Pennsylvania ruled on various procedural and substantive issues related to teacher licensing and professional standards in three cases:

► A professional employed by the school district as "Home and School Visitor" who proved to the satisfaction of a Department of Education Hearing Examiner that he spent over 50 percent of his time on the job in the classroom teaching social studies for the requisite three years was entitled to a permanent teaching certificate for social studies. (*Fairview School District v. Commonwealth of Pennsylvania, Department of Education,* No. 1191 CD 1979, Sept. 26, 1980).

► Teachers hired under federally funded Head Start and Get Set programs who were not informed before their employment that certification as an early childhood elementary school teacher was a necessary condition of employment were not subject to certification requirements under the Pennsylvania School Code and could not be suspended or laid off to make way for suspended or laid off certified public school teachers until given the full opportunity to obtain certification. (*Philadelphia Federation of Teachers v. Board of Education of the District of Philadelphia,* No. 1965 CD 1978, May 12, 1980).

► A certified public school nurse who successfully sued a school district in trial court for an appointment as school nurse filed by a non-certified person was found by the Commonwealth Court to have forfeited her right to relief by delaying a year after the hiring to file suit, which resulted in financial and administrative prejudice to the school district. (*Erway v. Wallace,* No. 1671 C.D. 1979, May 28, 1980).

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In a nonteacher case, the Connecticut Supreme Court upheld the authority of the school board to hire and test its nonprofessional employees such as custodians and educational secretaries regardless of a city civil service system or a citywide union contract purporting to cover the classified, non-professional employees (*Local #1186, American Federation of State, County and Municipal Employees v. Board of Education of the City of New Britain,* August 12, 1980).

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In a study investigating 448 New York City public school teachers undertaken by the Brooklyn District Attorney's Office, teachers were found to have falsified course credits to qualify for higher salaries, projecting a possible 2,500 teachers throughout the system who submitted fraudulent training records for unmerited pay raises. However, no teachers are likely to be prosecuted due to the disarray, gaps, and inadequate preparation of the school records. (*GERR* 850:32).

Competency Testing

With test scores on the general decline, attention has become increasingly focused upon the competence of the teachers. With fourteen states currently utilizing some form of competency testing for teachers, education officials in New York and Kansas have taken major steps in recent months to join their ranks.

The New York State Board of Regents has passed and sent on to the legislature a plan to specify teachers as professionals subject to testing, licensing, regulation and discipline by the board, as is done with other professional groups in New York such as doctors and accountants. The proposal includes various aspects which will take effect at various times, among them the following:

- A state conference of teachers for exchange of information and views;
- A professional practice board to recommend teacher requirements, licensing standards, and disciplinary findings to the Regents, composed of teachers, school administrators, public members, and representatives of colleges or universities;
- Legislation providing that non-public and private school teachers not be required to hold licenses, but expressing the intention that all teachers in New York, private as well as public will eventually qualify as professionals;
- Requirement of a two part examination testing general knowledge and individual subject area which can be retaken, not to be implemented prior to 1984;
- An internship program for administrators and teachers for new job openings, providing a mentor-evaluator with the salary to be paid by the state;
- In service education tailored to the individual needs of each school;
- A standardized plan for minimum performance to be locally required of teachers;
- The application of state professional codes and discipline standards to teachers; and
- Upgraded registration procedure for all public school teachers.

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The Wichita Board of Education has instituted the practice to begin implementation in the academic year 1981-82 of testing minimum skills at the ninth-grade level in English and the tenth-grade in mathematics. The local affiliates of the A.F.T. and the N.E.A.A. have formally agreed to the need for teachers to pass basic competency in English and mathematics, provided that only new teachers be required to take the exams.

RESIDENCY REQUIREMENTS

The Chicago School Board, over the opposition of Mayor Jane Byrne and the Chicago Teachers Union, has passed a requirement that all school employees reside within the city limits. Effective September 1, 1980, new employees must live within the city, current employees may not move outside Chicago boundaries, but current employees living outside the city remain unaffected. (*GERR* 872:21).

PAROCHIAL SCHOOLS

In 1979, the United States Supreme Court ruled in *National Labor Relations Board v. Catholic Bishop of Chicago* (440 U.S. 490) that schools operated by the Catholic Church to teach both religious and secular subjects are outside the jurisdiction of the NLRB, absent express congressional intent.

Last year, The National Labor Relations Board, following the U.S. Supreme Court's decision in *Catholic Bishop*, revoked its earlier ruling that the Archdiocese of Los Angeles had unlawfully refused to bargain with a lay teachers' union (103 *LRRM* 1261, *Cardinal Manning and California Federation of Teachers,* No. 21 CA-14799, Feb. 5, 1980).

In addition, the Second Circuit Court of Appeals, following *Catholic Bishop*, denied NLRB jurisdiction over a Catholic high school which had severed diocesan control and lodged its management in a private board of directors, where title would automatically revert to the diocese if the school ceased to be a Catholic high school, the curriculum and philosophy of the school were Catholic, and a majority of the faculty were members of religious orders. The court held that the Supreme Court's designation of "church-operated" school referred not to niceties of legal title and managerial control, but to the suffusion of religion in a school's curriculum and mandate to its teachers to indoctrinate the students in the particular faith. Since the jurisdiction of the NLRB over lay teachers would excessively entangle government in the religious mission of the school as prohibited by the First Amendment, the court denied enforcement of the NLRB order to recognize the Lay Faculty Association as exclusive representative for the lay teachers. (104 *LRRM* 2878, 1980 *DLR* 36: A-1 *National Labor Relations Board v. Bishop Ford Central Catholic High School,* CA 2, No. 79-4166, June 17, 1980).

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In another important post-*Catholic Bishop* Case, a federal district court ruled that the first amendment does not preclude suing a parochial school for unlawful sex discrimination under Title VII, permitting an unmarried pregnant teacher to proceed to trial against the Catholic school that fired her. Applying a two-part test derived from *Catholic Bishop*, the court held that Congress did not intend Title VII to exempt religious educational institutions from liability for sex discrimination, and that a court could decide whether the school's religious moral precepts constituting an essential condition of continued employment are applied equally to the school's male and female employees and whether the teacher was in fact discharged only because she was pregnant rather than because she had obviously had premarital sexual relations in violation of the school's moral code, without excessively entangling the government in the school's religious mission. (21 *FEP Cases* 1413, 1982 *DLR* 24: A-1, E-1, 48 *LW* 2521, *Dolter v. Wahlert High School* N.D. Iowa, No. C 79-1022, Jan. 28, 1980).

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The Minnesota Supreme Court ruled that in a parochial school with no tenure policy, a lay teacher whose contract had expired and whose position was filled by a nun did not have an implied contract to continue teaching, and her constitutional right to due process of law was not violated by the lack of a meaningful hearing absent state action. (*Coller v. Guardian Angels Roman Catholic Church of Chaska,* No. 205, June 27, 1980).

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A one day strike by New York lay teachers in September 1980 was deemed successful by officers of the Federation of Catholic Teachers who claimed 70 percent support for the strike in ten counties and many New York City schools, as well as the forced closing of several schools, although the diocese admitted to only one school closing. The archdiocese is now perceived as dealing more seriously with the union, and a favorable contract is forthcoming.

The Seventh Circuit Court of Appeals prohibited as unconstitutional the placement of any CETA workers in religious schools on the grounds that the funding allocation mechanism under the CETA Act, providing competition of would-be recipients for monies from one local governmental sponsor and profuse community commentary, created too great a risk of political entanglement for the CETA program as a whole. Acknowledging that the purpose of the CETA program was secular, the court had applied a two part analysis gaging the effect of the program as enhancing or inhibiting religion and the degree of government entanglement with religion required by the program to test the permissibility of individual CETA funded positions in parochial schools.

The court prohibited CETA funding for remedial teachers, summer and recreational instructors, adult education jobs, and speech and hearing diagnosticians and therapists as requiring too much administrative entanglement to ensure that the funds were not being used for sectarian purposes. The court distinguished funds for health workers who might deal with matters of mental health or sexuality and maintenance workers which had an impermissible effect on religion from the CETA funding permitted earlier this year by the Supreme Court for the cost of clerical help in keeping attendance records and administering standardized examinations required by state law in *Committee for Public Education and Religious Liberty v. Regan,* 100 S. Ct. 840 (1980).

Purely adjunct clerical staff, food workers and some health and safety workers such as traffic guards and escorts the court found to have passed the religions effect and administrative entanglement tests but failed the larger political entanglement test. (1980 *DLR* 185:D-1, *Decker v. O'Donnell,* Nos. 80-1230, 1231, 1264, Sept. 9, 1980).

CLASS ASSIGNMENTS

There were several cases decided last year involving the question of class assignments:

► The proper recourse for a teachers union aggrieved by a school board's unilateral adoption of policy requiring teachers to spend one additional hour in hall monitoring duties is to proceed under grievance and complaint procedure established under collective bargaining contract rather than to bring action for injunction relief until such time as matter is negotiated pursuant to North Dakota Teachers Representation and Negotiation Act (SLL 44:223). (103 *LRRM* 2945, *Grand Forks Education Association v. Grand Forks Public School District,* North Dakota Supreme Court No. 9623, Oct. 25, 1979).

► Neither the Pennsylvania Labor Relations Board nor a court has authority under State Public Employees Relations Act (SLL 48:221) to submit to binding arbitration jurisdictional a dispute arising from assignment of noontime teacher aides to duties involving supervision of students, where the collective bargaining contract refers only to removal of teachers from these duties and is silent as to who, if anyone, would assume them. (103 *LRRM* 2539, *Philadelphia Federation of Teachers Local v. Commonwealth of Pennsylvania Labor Relations Board,* Pennsylvania Court of Common Pleas, No. 4012, November 11, 1979).

► Teachers in a cooperative program who were assigned overload in their work were entitled to specific stipend payment for such overload under the award of another arbitrator who determined entitlement to such stipend in a prior dispute involving another cooperative education teacher who experienced overload and also involving same contract provision and situation of overload at the start of school the term, since the prior award is *res judicata* as to issue of remedy in the present case. A prior award is binding until parties amend the language of agreement, an Illinois arbitrator ruled. (73 *LA* 310, *Board of Education of Cook County and Evanston High School Teachers Council,* AAA No., 51 39 0109 79, Aug. 7, 1979).

TENURE AND SENIORITY

Recent budgetary limitations and decreasing enrollments have resulted in more and more teacher layoffs. Issues related to tenure and seniority have thus become increasingly important as teachers fight to keep their jobs.

Over the past year three particularly important cases related to tenure and seniority were decided, two in the area of layoffs and one reversing a denial of tenure

A federal trial court in Michigan took action during a fiscally-related layoff of teachers with far-reaching implications in the areas of school desegregation, affirmative action, and seniority. The judge nullified the layoff-by-seniority provisions of a collective bargaining agreement which thwarted the permanent court order that the school district achieve a 20 percent black teaching and administrative staff as part of an earlier court-mandated school desegregation plan, holding that the rights of minority *students* were at stake. To balance the burdens of cost, past discrimination and education quality, the court ordered recall of all laid-off tenured black teachers, future recalls based on seniority provided that 20 percent of the recalls are filled by black teachers, recall of no more than 80 percent non-black teachers if the recall pool ever consisted only of non-blacks or blacks not certified for available positions, and hiring of new black teachers to achieve 20 percent black staff after layoffs ended. (1980 *DLR* A-10: D-1, *Oliver v. Kalamazoo Board of Education,* W.D. Mich., K88-71C.A., Sept. 30, 1980).

Under Massachusetts law, an actual decrease in the number of pupils in a municipality extinguishes a tenured teacher's entitlement to continued employment, the Massachusetts Supreme Court held, ruling that a tenured physical education teacher discharged by seniority had no constitutional right to notice and a hearing. (*Milne v. School Committee of Manchester,* Mass. Adv. Sh. 1980, 2151, Oct. 1, 1980).

In another layoff by seniority case, a Pennsylvania Commonwealth Court ruled that the suspension of a male physical education teacher due to budgetory limitations was a valid exercise of school district discretion conforming to seniority rules. (*Fatscher v. Board of School Directors of the Springfield School District,* No. 1412 C.D. 1979, April 10, 1980).

Under New York State law (Education Law Section 2573 subd 6; L 1969, c. 330), in cities with a population larger than 125,000, once the superintendent has made recommendation of tenure for a school principle, the school board has no discretion to deny it, the highest New York state court held. The court ordered that the New York City school board issue a permanent certificate of appointment to a principal whose tenure the board had denied. (*In the Matter of Luz Caraballo v. Community School Board,* N.Y. App. No. 77, March 27, 1980).

The denial of tenure by a school district is increasingly being challenged in the courts by teachers and professional employees.

► The New York Supreme Court prohibited arbitration as interfering with a school board's authority to decide tenure of the denial of tenure to a probationary teacher for insubordination and incompetence unrelated to classroom performance where there was no connection to the claimed violation of evaluation procedures provided for the collective bargaining agreement. (102 *LRRM* 2434, *Board of Education of Middle Island Central School District v. Middle Island Teachers Association,* March 19, 1979).

► A federal district court in New York City ruled that a professional employee transferred from a probationary principalship as unsatisfactory had raised a sufficient factual question to proceed to trial as to whether the board of education was precluded from denying the employee tenure by later paying him a principal's salary and listing him as tenured in a position with duties substantially similar to that of principal. The court thus denied the board of education's motion to summarily dismiss the employee's claims. (*Orshan v. Anker,* 79c 309, E.D.N.Y., May 7, 1980).

► In the absence of an agreement, a school district is not required to accept tenured teachers from a district where the teacher positions no longer exist due to closing by the state Board of Education, the New Jersey Supreme Court ruled in a split decision. (*GERR* 882:22, *New Jersey Education Association and Jamesburg Education Association,* No. 1A-81/82, July 25, 1980).

Length of Service

Interpretations of length of service frequently lead to disposition tenure and seniority cases. The following state appellate and arbitration cases were decided on the basis of various fine points related to length of service

► A school librarian hired due to peculiar conditions at the school to work 160 of 182 days contractually required of teachers was held by the Massachusetts Appeals Court not to have completed an entire school year to be credited in computing tenure. (*Fortunato v. King Philip Regional School Distric,* Mass. App. Ct. Adv. Sh. 1980, 1311, July 2, 1980).

► The Commonwealth Court of Pennsylvania upheld an arbitrator's decision that, under the relevant collective bargaining agreement, seniority was to be based upon a teacher's total years of service to a school district rather than the total years of service in a given subject area. (*Central Dauphin School District v. Central Dauphin Education Association,* No. 372 D.C. 1980, June 30, 1980).

► A teacher laid off from a tenured position in one area is entitled to displace a tenured teacher in an area of former licensing based on total length of service as a teacher or supervisor in the school district. (*In the Matter of Dinerstein v. Board of Education of the City of New York,* No. 275, June 5, 1980).

► A Michigan arbitrator ruled that a teacher's failure to return from an extended leave of absence in compliance with the collective bargaining agreement amounted to a resignation which extinguished all previously accumulated seniority within the school district. (75 *LA* 297, *In re Board of Education of Ionia and Ionia Education Association,* A.A.A. No. 54 39 1176 80, July 21, 1980).

► Where a school board and teacher union undertake the new practice of issuing multi-year contracts for non-tenured teachers which are silent on the effect on seniority accumulated under the former one year contract, an Ohio arbitrator ruled that seniority would date prospectively from the effective date of the new multi-year contract. (74 *LA* 697, *In re Norwood Board of Education and Norwood Teachers Association,* April 1, 1980).

Eligibility of Position for Tenure

► Teachers employed under a federally funded state project providing special instruction who were hired anually, following re application and renotification, as needed on an hourly basis without a written contract restricted to work under the program, were found not entitled to tenure and fringe benefits by the Superior Court of New Jersey, although they performed duties functionally similar to those of other teachers. (*Point Pleasant Beach Teachers Association v. Callan,* A-1980-78 March 27, 1980).

► Under Connecticut law, school administrators are ineligible for tenure, the Connecticut Supreme Court ruled, denying relief to two administrators transferred to teaching positions under a reorganization plan. (*Delagorges v. Board of Education,* 410 A2d 461).

► In an important case, the Minnesota Supreme Court ruled that a public health nurse required to obtain a professional license through the state Board of Education qualified as a teacher under state law and had acquired tenure and seniority rights due to full-time professional activities rendered as a teacher. The public health nurse constitutes a level of school nurse distinguished by higher qualifications but not a separate position which the school district could eliminate for financial limitations. (*Krug v. Independent School District, Spring Lake Park,* No. 150, May 9, 1980).

LEAVE ISSUES

Maternity Leave

Because of increased legislative and legal activity in the area of sex discrimination, maternity leave has become one most controversial issues for teachers and school administrators.

The 1978 amendments to Title VII of the Civil Rights Act of 1964 included discrimination on the basis of pregnancy as prohibited sex discrimination.

The Pregnancy Discrimination Act of 1978 provides that pregnant women be treated the same as other employees on the basis of ability or inability to work, but does not require employers to treat pregnant women in any particular manner with respect to employment-related matters, or to establish any new program where none currently exist.

In the most important maternity leave case this year, a federal appeals court in Richmond, Virginia held two Virginia school district maternity policies unconstitutional and ordered teachers terminated due to pregnancy reinstated at the first opportunity. The school board policies required terminating pregnant teachers despite a physician's letter of fitness to teach, one immediate if the pregnancy was discovered before the start of the academic year, the other at four months. Overturning the lower court's award of back pay, the sixth Circuit Court of Appeals held that the school board members were immune to being sued for money damages either personally or in their official capacity because they had acted in good faith while implementing the policies which violated the teachers' constitutional rights. (21 *FEP Cases* 895, *Paxman v. Campbell,* CA4, Jan. 2, 1980).

Important state cases concerning maternity leave follow:

A pregnant teacher taking a pregnancy related leave of absence must be permitted to take advantage of her sick leave as if she were suffering from any other ailment, the New York Supreme Court ruled, finding that a school board had engaged in unlawful discriminatory practices by denying the benefits. (*State Division of Human Rights v. Sweet Home Board of Education,* 423 N.Y.S. 2d 748).

A school board's denial of extended leave to allow a teacher to breast-feed for the baby's health where the teacher is physically able to return to work does not constitute unlawful sex discrimination, the Pennsylvania Supreme Court held. (1980 *DLR* 2: A-3, *Board of School Directors of Fox Chapel Area School District v. Rossett;* No. 187-78, Dec. 21, 1979).

Sick Leave

Issues related to sick leave make up the bulk of litigation in teacher leave. The following state court and arbitrator cases decided various aspects of sick leave:

► A teacher who obtains retirement and disability status while on medical leave of absence has resigned her teaching position and loses her career status, the North Carolina Court of Appeals ruled, ordering the lower court to decide whether the school district was precluded from arguing the resignation by having advised the teacher that her application for disability and retirement would be just a formality. (*Meachan v. Montgomery County Board of Education,* No. 7919SC642, June 17, 1980).

► An Ohio trial court ruled that a Board of Education violated the collective bargaining agreement by unilaterally amending a policy of awarding severance pay for unused sick leave days as agreed by the teacher union and the board, and ordered performance of the agreed upon policy. (*GERR* 832:19, *Perrysburg Education Association v. Perrysburg Board of Education,* Court of Common Pleas, Wood County, Ohio No. 78-CIV-209, June 12, 1979).

► A Wisconsin circuit court has ordered enforcement of a Wisconsin Employment Relation Committee ruling that a school district committed an unfair labor prctice and violated state law by denying a part time teacher's request for maternity leave, by terminating regular part time teachers' employment and threatening such teachers with possibility of loss of future employment because of and in retaliation for engaging in protected, concerted activities. (*Wisconsin Employment Relations Commission v. Joint School District, City of River Falls,* Wisc. Cir. Ct. Pierce County, No. 12754-D, March 17, 1980).

► A Pennsylvania arbitrator ruled that a school guidance counselor diagnosed by her life long physician as having suffered from "environmental stress, emotional stress and anxiety" due to the Three Mile Island accident was entitled to sick leave for the illness. (*GERR* 848:18, 73 *LA* 1227, *In re Penn Manor School District and Penn Manor Education Association,* Dec. 21, 1979).

► Teachers can accumulate sick leave while absent because of job-related injuries. Sick leave is part of the compensation that a school board provides its teachers, the court ruled. If a teacher is entitled to full salary, such as when absent due to job-related injuries incurred without fault, then they should be entitled to all forms of compensation—including sick days (*Tibaya v. Board of Education of the Newark School District,* April 3, 1980, Delaware Supreme Court, No. 309, 1979).

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The North Carolina State Department of Education, over the vigorous opposition by the North Carolina Association of Educators, has submitted a plan to eliminate extensions of the paid eight days a year sick leave, which will probably be implemented in the 1981-82 school year.

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Personal Leave

A New Jersey appellate court held that the U.S. Constitution proscribes a school board granting teachers paid personal religious leave days as discriminating against non-religious employees and improperly entangling the government in religion. (*Hunterdon Central High School Board of Education v. Hunterdon Central High School Teachers' Association,* No. A-4607-78, June 19, 1980).

► Attendance at papal mass qualified as "personal business for proper purpose" under the collective bargaining agreement providing paid personal leave where the school board had on three prior occasions granted a teacher personal leave to attend a spouse's ministerial convention, an Iowa arbitrator ruled. (79 *LA* 131, *In re Genesco Community Unit School District and Genesco Education Association,* AAA No. 51 39 0035 80, June 10, 1980).

► A school district had the right to deny paid leave for Jewish holidays under the terms of a collective bargaining agreement that disallowed paid leave for religious purposes, a Wisconsin arbitrator ruled, even though the practice resulted in Jews being treated somewhat unfairly. (*GERR* 849:16, *School District of Beloit and The Beloit Education Association,* Arb. Grecco, Dec. 11, 1979).

► A Michigan arbitrator denied a paid personal business leave day to a teacher on the grounds that her stated reason for absence, "business of a personal and private nature," amounted to stating no reason at all. (*GERR* 845:22, *Michigan City Area Schools and Michigan City Education Association,* AAA No. 51 39 0361 79 B, Nov. 8, 1979).

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A school district abused it discretion to grant professional leave in violation of the collective bargaining agreement by unilaterally setting a limit of two teachers who would be granted leave on any one day. (74 *LA* 934, *In re Durant Community School District and Durant Education Association,* AAA No. 51 39 0920 79 April 17, 1980).

STANDING

► The Minnesota Supreme Court has ruled that a union which is not a party to an agreement to dismiss all lawsuits between a local organization and a school board may not sue the board on the grounds of unfair labor practices in connection with an earlier strike.

The suit brought by the Minnesota Education Association was dismissed because the statewide organization was not the bargaining agent, was not a party to the strike, and could not show sufficient injury in fact to its members to qualify as an "aggrieved party" under law. (*GERR* 857:19, *Minnesota Education Association v. Independent School District, Lake Bention,* No. 250, Jan. 11, 1980).

► A union president, himself a teacher, had no standing to file a grievance proceeding against a school board for its failure to post two position openings, which precluded two laid-off bargaining unit members from applying for the positions, but caused no personal injury to the union president, the New Hampshire Supreme Court held, overruling a state Public Employee Labor Relations Board decision that the school board had committed an unfair labor practice by refusing to submit to the grievance procedure. (*GERR* 836:26, *Appeal of Berlin Board of Education,* No. 79-085, March 31, 1980).

CONSTITUTIONAL RIGHTS

If media interest is the leading indicator of importance in court cases, then Supreme Court cases involving the constitutinal rights of teachers would rank high on the list of consequential litigation in the broad area of labor relations.

Last term, the Supreme Court did not decide any significant cases involving the constitutional rights of teachers, but they may someday rule on the following significant circuit courts of appeals cases decided last year:

► A school district cannot fire a school teacher simply because the teacher employed a controversial role-playing teaching while teaching American history, the Fifth Circuit held.

The classroom techniques, which evoked strong feelings on racial issues, were protected under the First Amendment, the court said. After eight years of litigation, the teacher's relief included monetary damages, attorneys fees, and reinstatement. (*Kingsville Independent School District v. Cooper,* CA 5, No. 77-2995, Feb. 15, 1980).

► In protest against curriculum, a high school student filed suit alleging a violation of constitutional rights on the ground that the district's decision not to hire two particular teachers deprived her "of the opportunity to learn from and associate with these capable teachers," and has created an "atmosphere of tension and fear among present teachers resulting in a dimunition or loss of academic freedom in the part of all teachers and students in the district."

The Seventh Circuit found these allegations regarding teacher hiring decisions "creative but no more availing." The Court stated: "It is difficult to conceive how a student may assent a right to have the teacher control the classroom when the teacher herself does not have such a right." (*Zykan v. Warsaw Community School Corporation,* CA 7, No 80-1038, Aug. 22, 1980).

► A federal district court that found that a school district violated a blind teacher's constitutional rights by its failure to hire here properly excrased its discretion when it refused to order the school district to grant her tenure with out having opportunity to evaluate her qualificatins and performance as a teacher. (*Gurmankin v. Costanzo,* 23 FEP Cases 301, CA 3 No. 80-1449, June, 30, 1980).

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In a federal district court decision of note, a Tennessee tribunal ruled that where the record does not reflect that the criteria for employment to teach a Bible study used by a school district included no religious test or profession of faith, there was no violation of the establishment or religion clause of the First Amendment. (*Wiley v. Board of Ed. of City of Chattanooga,* E.D. Tenn., No 78-1-2, Sept. 5, 1980).

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In yet additional litigation on the issue of religious freedom, a music teacher fired by the New Bedford, Mass. school district for refusing to teach patriotic and religious songs has sued the school committee in federal district court in Boston for $400,000.

The teacher, a Jehova's Witness, argued that the school district violated her constitutional rights to freedom of religion and freedom of speech, to due process and equal protection of the law and academic freedom to teach.

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Finally, in a more garden variety "free speech" case, an Arkansas teacher charged in federal district in court that he was "unlawfully suspended and terminated" because he had criticized his principal. The school district said the reason for dismissal was insubordination, but the teacher argued that his firing was the result of his questioning of school policies during faculties meetings and, therefore, a First Amendment violation.

RACIAL DISCRIMINATION

In what many observers termed a "blockbuster decision," the U.S. Supreme Court ruled that the Federal Government can deny funds to local school districts because of statistics showing a disproportionate number of black and other minority teachers being assigned to *de facto* segregated schools, even without proof that the school board intentionally discriminated in teacher assignments.

Voting six to three, the Court upheld the decision of the Department of Health, Education, and Welfare to deny special funding for the 1977-78 school year from the New York City Board of Education. The funds were authorized under the 1972 Emergency School Aid Act.

In an opinion written by Justice Blackmun, the Court held that Congress may set conditions on the receipt of federal funds to induce would-be recipients to take "voluntary" action to eliminate segregation. Congress has the authority "to establish a higher standard, more protective of minority rights, than constitutional minimums require," the Court said, rejecting New York City's claim that funds may be cut off only upon proof of "intentional discrimination in the constitutional sense." (*NYC Board of Education v. Harris, GERR* 839:32, US Sup Ct, No. 78-873, November 28, 1979).

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In important courts of appeals actions in this area, the Fifth Circuit said tht evidence that all 14 of a school district's head athletic coaches, 16 of 18 assistant athletic coaches, and all persons selected to fill central office staff vacancies over a seven-year period were white established a prima facie case of purposeful racial discrimination when considered in light of historical background. But, the court continued, the school board rebutted this prima facie case by conclusively demonstrating that the lack of blacks hired for positions in question was solely due to lack of black applicants.

The court of appeals also held in this case:

► The federal district court did not err by its failure to order the school board to adopt a policy of advertising employment opportunities to the general public, where the record failed to indicate that the lack of advertising actually discriminated against blacks.

► But, the federal district court did err when it required two black applicants who were not employed by the school board as high school principals to prove that they were the most qualified applicants for the position. Where evidence established that the board purposefully discriminated against blacks in the appointment of high school principals, the burden of proof shifts to the board to show by clear and convincing evidence that the two applicants would not have been appointed even absent discrimination, and

► Finally, the federal district court did not err when it rejected a black faculty member's claim of racial discrimination arising from her failure to be selected for position of special education co-ordinator, where the evidence failed to establish that the school board discriminated against blacks in hiring of instructional personnel, and the court found that the successful applicant had more experience than the black faculty member in area of special education. (*Lee v. Washington County Bd. of Ed.,* 23 *FEP Cases,* 1472, CA 5, No. 78-3338, September 18, 1980).

The U.S. Court of Appeals for the Eighth Circuit decided a case with implications for settlement agreements involving minority-group teachers. The court ruled that where an attorney clearly advised minority-group teachers of their rights and received authority to enter into a settlement agreement that included guidelines for hiring and promotion, a federal district court could properly deny the teachers' appeal to set aside the settlement agreement. (*Richmond v. Carter,* 22 *FEP Cases* 890, CA 8, No. 79-1421, March 11, 1980).

In federal district court actions:

► A New York court ruled that the Buffalo Board of Education did not violate Title VII when it hired a white nonresident of the city as a provisional appointee to position of director of security and then rehired him following civil service examination as a permanent employee despite the presence of higher-scoring black city resident on eligibility list, where the evidence did not support the inference that the board's policy of favoring provisional employee who passes subsequent examination discriminates against blacks, board did not have city-resident policy, and its practice of appointing satisfactory provisional incumbent is directly related to successful job performance. (*Kirkland v. Buffalo Board of Education* 23 *FEP Cases* 1537, USDC W NY, No. Civ. 77-295, October 9, 1979).

► A South Carolina court reiterated the Supreme Court's holding in *Monell* (17 *FEP Cases* 873) that school districts and their boards of trustees are "persons" under the Civil Rights Act of 1981 and can be sued for alleged employment discrimination.

However, the court also stated that a school superintendent, as the agent for a school district, is an employer and can be held accountable for a school district's alleged violations of Title VII, notwithstanding the contention that the charge filed with EEOC named him in his official capacity and not personally. (*Kelly v. Richland School District* 2, 23 *FEP Cases* 540, D.S.C., No. 78-150, July 21, 1973).

* * * * *

In an arbitration decision involving a recurrent controversy in labor relations, John C. Manson ruled that a school employer did not discriminate on the basis of race where it awarded a vacancy in ornamental horticulture in the adult education program to a white teacher who knew science of horticulture and had actual tools for handling adult classes effectively instead of a black teacher in elementary and junior high school student levels who was found lacking in certain requirements for teaching adults. (*School Board of Palm Beach County,* 74 *LA* 494, Arb. John Manson, No. 80K/04299, February 15, 1980.)

SEX DISCRIMINATION

Although the United States supreme Court has twice denied certiorari on the issue, it may have to give in and decide whether Title IX of the 1972 Education Amendments lets the Federal Government stop sex discrimination in employment at federally assisted schools.

Title IX provides that "no person" shall be subjected to sex discrimination under any education program or activity receiving federal financial assistance.

Bucking the authority of four federal appeals courts that had answered that question in the negative, the U.S. Courts of Appeals for the Second and Eighth Circuits weighed in on the other side of the controversy in July 1980.

The Second Circuit conceded that the statutory language—"no person" shall be subjected to sex discrimination in federally funded educational programs—is ambiguous. Virtually identical language in Title VI of the 1964 Civil Rights Act caused Congress to later specifically bar application of Title VI to employment. In contrast, Title IX, which is modeled on Title VI, conspicuously omits the exempting provision. The Second Circuit was persuaded by a review of the legislative history that congress intended Title IX's language to cover employment practices. (*GERR* 877:12, 23 *FEP Cases, North Haven Bd. of Education v. Hufstedler;* CA 2, Nos 79-6136, 6247, and 7747).

In a narrower ruling, the Fifth Circuit said that Title IX empowers the Federal Government to regulate the employment practices of recipient schools, but limited such regulation to specific federally funded programs. The court was impressed that the statute applied to "no person," not to a more limited group such as "no student." However, the Government's authority does not permit it to issue regulations that apply to all employees of an entire school system so long as any program or activity of that school receives any federal assistance. The statutory language, the Fifth Circuit found, restricts enforcement to a federally assisted "program or activity." (*GERR* 877:12, 23 *FEP Cases* 628, *Dougherty School System v. Harris,* CA 5, No. 78-3384, July 28, 1980).

However, earlier in the year, the U.S. Court of Appeals for the Ninth Circuit joined three other circuits—the First, Sixth, and Eighth—in holding that Title IX does not reach the issue of employment discrimination by educational institutions.

In its appeal against Seattle University, the Government argued that at the least it must have the authority to issue regulations that prohibit sex discrimination in employment to the extent that the discrimination "infects" the beneficiaries of a federally assisted program.

The Ninth Circuit noted that this "infection theory" has been approved when it has been shown that eliminating discrimination against students is impossible in the absence of eliminating discrimination against faculty. However, the opinion added, the regulations at issue here require no showing of a connection between discrimination (GERR 872:81, 23 *FEP Cases* 525) against university employees and its effect on students. (*Seattle University v. HEW;* CA 9, No. 78-1746, June 19, 1980).*

The issue of whether the Federal Government can deny funds to educational institutions for employment-related sex discrimination came into play in a case involving Grove City College in Western Pennsylvania. A federal district court in Pennsylvania ruled that the college could not be forced to sign an assurance of compliance form—because the form itself required adherence to regulations banning sex discrimination on the job. The school filed suit after the Federal Government threatened to cut off Basic Grants (BEOG) and Guaranteed Student Loans (GSL) to Grove City students.

In an action brought under both Title VII and Section 1983, a federal district court in New York ruled that even if sex was one of the factors considered by a superintendent in reaching his determination to transfer a woman, a federal district court cannot interfere with the decision-making process of a school system, if the transfer was for valid educational reasons, without any accompanying adverse economic impact, and without any indication or allegation of bad faith. (*Rodriguez v. Board of Education, Eastchester,* S.D.N.Y., *21 FEP Cases* 755, No. 79 Civ. 3619, November 20, 1979.)

* * * * *

A former Emeryville, California school teacher suspended after undergoing a sex change operation has won a court battle to gain back pay from the school district.

Without comment, the California Supreme Court let stand a lower court decision requiring the school district to give back pay to Steve Dain, formerly Doris Richards.

Dain, as Miss Richards, was employed as a physical education teacher in the 1975-76 school year and took leave to take part in a sex change program. When the school district learned about this, it suspended him without pay. (*Dain v Emery Unified School District of Alameda County*, Calif. Ct. of Appeals, No. 46815, March 28, 1980).

AGE DISCRIMINATION

Most labor relations experts expect that age discrimination will become one of the hottest public employment equal opportunity issues in the 1980's. In 1978, amendments to the Age Discrimination in Employment Act (ADEA) raised the compulsory retirement age to 70. In addition, litigation filed on constitutional and state statutory grounds prior to the effective date of the ADEA amendments (January 1, 1979) are finally reaching appellate courts.

For example, the Iowa Supreme Court ruled that a school board's policy of requiring school teachers to retire at age 65 bears a rational relationship to the valid government interests of planning for administrative needs and recruitment and of maintaining a mixture of younger and more experienced teachers. Therefore, the school board did not violate the Equal Protection Clause of the U.S. Constitution or Iowa Constitution when it failed to renew the contract of a nonprobationary teacher with 19 years experience because she had attained age 65.

The teacher relied on *Gault v. Garrison,* 16 *FEP Cases* 245 (CA 7, 1977), but the court differentiated *Gault* on the grounds that *Gault* failed to disclose an "identifiable state purpose" for the termination of tenure. The Iowa court cited a spate of other courts as in accord with the evaluation of the mandatory retirement policy in this case, including *Palmer v. Ticcione,* 19 *FEP Cases* 320 (E.D.N.Y. 1977), aff'd 19 *FEP Cases* 321 (2d Cir. 1978); *Kennedy v. Comm. Unit School Dist.* No. 7, 16 *FEP Cases* 314 (1974), and *Harren v. Middle Island Central School Dist. No. 12,* 19 *FEP Cases* 467 (1975). (*Deshon v. Bettendorf School District,* 21 *FEP Cases* 644, Iowa Supreme Court, No. 63170, October 17, 1979).

In an important ruling involving the issue of retroactivity of the ADEA the U.S. Court of Appeals for the Third Circuit held that prior to the 1979 effective date of the amendments, a school district could legally terminate an administrator under its mandatory retirement policy even though his retirement would have occurred after enactment of the amendments.

Overruling a district court decision that such action violated the 14th Amendment to the U.S. Constitution, the appeals court stated that a ruling in favor of the administrator would "eviscerate any congressional attempt to grant employers and others lead time in order to provide smooth transitions for statutory changes." (*Kuhar v. Greensburg-Salem School District*, 22 *FEP Cases* 10, CA 3, No. 79-1698, February 19,1980).

In another case involving a state retirement law, an Indiana teacher brought a suit challenging the Act after her contract was not renewed in August 1978.

Federal district court judge Jesse Eschbach upheld the constitutionality of mandatory teacher retirement, stating that the aging process tends to erode teaching abilities and citing several other reasons for mandatory retirement:

- To ensure that teachers are physically, mentally, and emotionally fit:
- To save money by replacing higher-paid older teachers with lower-paid and less experienced teachers;
- To bring younger teachers and more minorities into the teaching profession;
- To make planning easier for the number of teachers needed in the future;
- To promote an "introduction of new ideas" and creativity in teaching; and
- To allow a more graceful, less costly method to ease teachers out of the schools.

In a suit brought by the U.S. Department of Labor involving non-teaching employees, a federal district court ruled that the duties of predominantly male custodians are not equal, within the meaning of Section 6(d) of FLSA, to those of lower-paid cleaners, who are predominantly female, when full cycle of jobs is compared. (24 *WH Cases* 724, *Marshall v. Kenosha Unified School District No. 1*, 24 *WH Cases* 724, E.D. Wis, No. 73-C-399, March 12, 1979; Memorandum and Order July 11, 1979).

On an appeal brought by EEOC, the Seventh Circuit upheld the district court, stating that the lower court properly compared job performance on an annual basis instead of considering work performed in summer and various vacation periods. (*EEOC v. Kenosha Unified School District No. 1.*, 24 *WH Cases* 728, CA 7, Nos. 79-1776, 79-2042, 79-2096, April 29, 1980).

EQUAL PAY DISCRIMINATION

The matter of equal pay for equal work is going to be the civil liberties issue of the 1980's, according to EEOC Chair Eleanor Holmes Norton.

And what Norton says has become increasingly important since it is EEOC—and not the Labor Department—who is now responsible for enforcing the Equal Pay Act.

In one of its first equal pay actions, EEOC filed suit in May charging that the Hobart, Indiana Community School Corporation unlawfully paid less to its female coaches performing jobs equal to their male counterparts.

The EEOC complaint, filed in the U.S. Distirct Court in Hammond, was based on an investigation which the agency said disclosed that the duties of coaches, male and female, required substantially equal skill, effort, and responsibility. "Equal pay coach cases have implications well beyond apparent violations," Norton said. She explained: "These cases have the important programmatic effect of correcting the traditional underevaluation of sports programs in which women participate. At a time when there is a great surge in interest in sports by girls and women, these cases make the point that they are entitled to full participation in sports activities." (1979 *DLR* 90:A-13)

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In another case involving equal pay for male and female physical education teachers, the Eighth Circuit Court of Appeals held that male teachers were entitled to greater pay where male jobs required more experience, training, and ability to develop a physical education curriculum and where male teachers reported directly to the principal and to parents on physical education programs. (*Horner v. Mary Institute*, 21 *FEP Cases* 1069, CA 8, No. 79-1352, January 14, 1980).

HANDICAPPED DISCRIMINATION

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against handicapped individuals in any program or activity receiving federal financial assistance. Virtually every school district receives some federal funds, and, therefore, virtually every school district is liable for suits by both students and teachers under the Rehabilitation Act.

The Syracuse school district was sued in federal district court by an individual who claimed that the school district failed to hire him as a teacher's assistant and substitute teacher solely because of his prior mental illness. Specifically, the individual alleged that the school district made impermissible pre-employment inquiries and refused to hire him because of his answers to those questions.

The court ruled that the school district's inquiry about whether the individual had experienced or had ever been treated for any "migraine, neuralgia, nervous breakdown, or psychiatric treatment" was impermissibly phrased.

However, the court concluded, in order to be granted summary judgment, the allegedly aggrieved individual had to prove that his nonhiring was solely by reason of his handicap. And that, the court said, was an issue to resolve at a trial on the merits. (*John Doe v. Superintendent of Syracuse City School District*, N.D.N.Y., 80-CV-188, September 30, 1980).

NATIONAL ORIGIN DISCRIMINATION

Hispanics are the largest growing minority in the United States. Their influence in the education field is most obvious in the rules proposed by the new Education Department for bilingual education. Their presence was also evident in several cases involving alleged national origin discrimination decided last year.

In a major case, the U.S. Court of Appeals for the Tenth Circuit ruled that Mexican-American students had standing to challenge the employment practices of a school district, which allegedly had an adverse impact on the educational opportunities afforded the Mexican-American pupil, but that the students had not proven their claim. (23 *FEP Cases* 1233, *Otero v. Mesa County Valley School District*, 1233, CA 10, No. 79-1261, August 15, 1980).

In another case involving alleged national origin discrimination against the Dallas Independent School District, the U.S. District Court for the Northern District of Texas, Dallas Division, concluded that the school district's dismissal of a Mexican-American teacher was "not motivated by a national origin animus." (*Francisco Patino v. Dallas Independent School District*, N.D. Tex., CA-3-76-0599-C, March 21, 1980).

* * * * *

A Detroit school system policy designed to achieve a sexually and racially "balanced" staff does not discriminate against persons of Slavic national origin, according to the U.S. District Court for the Eastern District of Michigan.

The school system's "balance of staff" policy, adopted in 1974, provided that "pupils shall have experiences with teachers and administrators of different races and shall have both new and experienced teachers on a faculty which includes both men and women." The policy set forth the following order of priorities for filling vacancies: the necessary teaching qualifications, race, experience, and sex. It further provided that eligibility pools used for selection of administrators shall "include a sufficient number of qualified candidates—black and white, male and female, experienced and inexperienced—to permit a realistic choice in the selection of persons to fill vacancies." (GERR 882:21, 23 *FEP Cases* 1396, *Sklenar v. Central Board of Education of the School District of the City of Detroit; E.D.Mich., Case No. 6-70415, September 11, 1980).*

VETERANS DISCRIMINATION

Several lawsuits were brought by teachers under the Vietnam Era Veterans Readjustment Act of 1974. Under the 1974 amendments ot the Veterans Reemployment Rights Act, Congress explicity provided that full coverage be extended to veterans who had been employed by the states and their political subdivisions.

In an important case, the U.S. Court of Appeals for the Second Circuit ruled that the Act should be applied retroactively to grant a returned veteran, who was employed as a full-time teacher by the county board of education before his induction into the army, the right to purchase retirement credits for peacetime military service prior to the effective date of the 1974 amendments that extended full coverage of the Act to veterans employed by states and their political subdivisions, even though the legislation is silent on the matter of retroactivity. (103 *LRRM* 2025, *Von Allmen v. Connecticut Teachers Board,* CA 2, No. 78-7534, December 7, 1979).

In another case, a federal district court ruled that the school board restored a returned veteran, who was employed as a teacher on one-year contract before joining the armed forces, to position of "like seniority, status, and pay" as required by the Act, when board re-employed him on one-year probationary teacher's contract and subsequently terminated him at close of the school year because of planned reduction in teaching force. *(Gibney v. Hood River County School District,* USDC Ore., 102 *LRRM* 2770, No. 78-712, July 16, 1979).

STATE LEGISLATIVE ACTIVITY

LEGAL DEVELOPMENTS

No new collective bargaining laws for teachers were enacted last year but nine states modified existing bargaining laws affecting teachers.

The character of the legislation varied considerably. For example, while Minnesota granted teachers the right to strike, Hawaii expanded the definition of strike to include sympathy strikes by public employees in support of other striking public employees.

Instead of major revisions to strike provisions of bargaining laws, however, most state legislatures concentrated on ways to enforce statutes on strike penalties without interfering with dispute settlements machinery. Revisions to Kansas' bargaining law for example, now provides for mediation and factfinding for issues at impasse and allow factfinders to recommend independent positions.

Amendments to existing bargaining laws in states covered the gamut of teachers labor relations;

- issues subject to mandatory bargaining;
- agency shop fees;
- right to strike;
- clarification of strike provisions;
- shorter negotiation periods;
- use of secret mechanical devices during contract negotiations between employers and employees;
- composition and procedures of public employee relations commissions;
- and revision of impasse procedures and factfinding.

In addition, states approved laws relating to employment and service credit, leaves of absence, discipline, and layoff procedures.

California enacted laws permitting employment and service credit for teachers located in a territory encompassed by a newly-formed unified school district and granting leave of absence for service on boards, commissions, and committees. Two states—California and Connecticut—enacted laws on the fair dismissal of teachers, and Florida created an education practices commission responsible for disciplining teachers and school administrators.

California also revised teacher instruction credential requirements to allow teachers holding a multiple subject instruction credential to teach a specific subject in grades six to nine after completion of additional coursework. An amendment to Massachusetts law now permits state employees to teach part-time in state educational institutions on the condition that these employees do not have official responsibility for, or participate in, the financial management of the educational institution.

Other state legislation affecting teachers includes:

- Adoption of a law by Minnesota giving teachers the right to strike on 60 days notice in the absence of an agreement or abritration award, and creating a legislative commission on employee relations for oversight of collective bargaining.
- Enactment by Connecticut of a law allowing contract termination for any teacher who has worked continuously for four years and who loses a position to another teacher, and adoption of another law preventing the use of secret mechanical devices for hearing or recording contract negotiations between employers and employees.
- Authorization by New Jersey of payroll deduction for representation fees by a majority union from nonmember employees in a unit, and the establishment of procedures for the rebate of pro rata share expenditures by the majority representative to nonmember employees.
- Expansion by the District of Columbia of the organizational and bargaining rights of public employees and the broadening of the public employment relations board's authority to allow remedial orders for back pay.
- Enactment by California of a law permitting organizational security agreements to require classified employees to join an exclusive employee organization or pay the organization a service fee.
- Establishment of an education practices commission responsible for disciplining teachers and school administrators in Florida.

California Laws

The California legislature passed several laws affecting the procedures adopted by and the composition of the Public Employment Relations Board. Under an amendment to the law governing public school employer-employee relations, the board is directed to respond within 10 days to any inquiry from a party who has petitioned for an extraordinary relief as to why the board has not sought court enforcement of its final decision or order, to seek such enforcement upon request, and to file in court records of the board proceeding and evidence disclosing a party's failure to comply with the board's decision or order.

Another amendment empowers the Governor to appoint a general counsel to the PERB, upon PERB's recommendation. The general counsel is to serve at the board's pleasure.

Under a new California law, school districts and county superintendents of schools may grant leaves of absence with pay, to certificated employees to serve within the state for not more than 20 school davs per school year on specified boards, committees, commissions, or other groups. Reimbursement for compensation paid to a certificated employee's substitute and for actual administrative costs related to any leave of absence must be paid to the school district or county superintendent by the board, committee or commission, or group to which a certificated employee is assigned.

An amendment to the Education Code authorizes a teacher holding a multiple subject instruction credential to teach a specific subject in grades 6 to 9 after completion of 20 semester hours of coursework or 10 semester hours of upper division coursework in that subject, except in special areas where the commission on teacher preparation and licensing requires additional coursework.

A new law requires members of the commission on professional competence to select the place of a hearing upon request for this hearing by a certified school employee who has received a notice of intention of dismissal. The hearing officer is empowered to select the place for the hearing where commission members cannot agree on the hearing site.

A new statute permits union security agreements between classified employees in public schools and their employers. As a condition of their employment, these employees are required to either join the exclusive employee organization or pay the organization a service fee. Governing boards of school districts are authorized to check off union dues from salaries of classified employees. Employees who are not union members may pay service fees directly to the exclusive union representative in lieu of the salary deductions. Under a new law, a public school employee who is a member of a religious body whose teachings object to supporting employee-employer organizations is not required to join, maintain membership, or financially support any employee organization as a condition of employment. An employee, however, may be required to pay sums equal to the agency fee to a nonreligious, nonlabor organization charitable fund exempt from federal income tax. The law also permits employees organizations to charge public school employees for costs incurred in the resolution of any grievance arising from negotiation representation where the resolution of this grievance is requested by an employee.

Another law permits members of the state teachers retirement system who were on leave of absence to serve as an elected officer of a national, state, or local educational organization between October, 1974 and June 30, 1978, to receive full service credit, not to exceed four calendar years, for the leave of absence. This law expires on January 2, 1981.

California SEERA

The State Employee-Employer Relations Act has undergone several changes. A memorandum of understanding between the state and its employees reached under the procedures stipulated in SEERA now supersedes some existing laws regulating the accumulation of vacation and sick leave credits and credit for prior services. The memorandum, however, no longer supersedes specific provisions of the Public Employees Medical and Hospital Care Act. Other amendments to SEERA require that only employee representatives of recognized employee organizations are entitled to time off without loss of compensation and other benefits for meet-and-confer sessions, and designate the governor as the state employer to meet and confer on matters relating to supervisory employee-employer relations.

A new statute allows certified employees, previously employed during the 1979-80 school year by a union school district located in a territory encompassed by a newly formed unified school district and employed for the 1980-81 school year by such unified school district, to be placed on the salary schedule of the unified school district and to receive credit for all services performed as an employee of the union high school district. Unified school districts may, but are not required to, employ employees of the union high school district who were not employees in the 1979-80 school year in schools being acquired by the unified school district.

The public school employer-employee relations act has been amended to permit parties to impasse, after mediation, to agree mutually upon a person who is to serve as chairperson of a factfinding panel. Previously, the PERB selected the chairperson and bore the costs for services of the chairperson. Under the new law, costs for the chairperson's services are borne equally by both parties and are subject to specified procedures relating to billing and payment.

Connecticut and D.C. Acts

An employment contracts of a teacher who has worked continuously for four years may be terminated at any time, under a new Connecticut law, for loss of position to another teacher, if no other positions exist for which he or she may be appointed. If qualified, this teacher shall be appointed to a position held by a teacher who has not completed three years of continuous employment. Determination of employment contract termination is made in accordance with a layoff procedure agreed upon by the local or regional board of education or in the absence of an agreement, with the written policy of a local or regional board of education. The law, however, does not prohibit a local or regional board of education from entering into an agreement with an exclusive employee representative on matters involving teacher recall. The law also specifies that a board of education, prior to contract termination, is required to give the affected teacher a written notice of termination.

The Connecticut labor relations law is amended to prohibit an employer or an employee, or their agents, from recording a conversation or discussion pertaining to employment contract negotiations between the parties to the negotiations by means of any instrument, device or equipment, without the consent of both parties.

New provisions covering most aspects of labor relations between the District of Columbia and its employees were incorporated into the D.C. Government Comprehensive Merit Personnel Act by a new law that went into effect on April 4, 1980. Under this law, the public employee relations board replaces the board of labor relations. The new board is authorized to resolve unit determinations and representation issues, certify and decertify bargaining representatives, conduct elections, determine and decide unfair labor practice allegations and order remedies, determine scope of bargaining disputes, and to resolve bargaining impasses through factfinding, mediation, and binding arbitration. The new law empowers the PERB to retain its own independent legal counsel and to order remedies for backpay, and provides for judicial review and enforcement of PERB decisions. The new law also includes compensation in the list of bargainable items and extends organizational and bargainable rights to public school supervisors.

Florida Enactment

A new law in Florida creates the Education Practices Commission within the department of education. Consisting of 13 members representing teachers, school administrators, and the public, the commission reviews and issues final orders in cases involving revocation and suspension of teacher and school administrator certificates. The local school boards, however, retain the authority to discipline teachers and administrators. Complaints are initially investigated by the department of education for factual evidence of violations. Upon a finding of probable cause, the commissioner of education files a formal complaint with a hearing officer who makes recommendations to the education practices commission panel. Final orders issued by the commission panel either dismiss complaint or impose penalties resulting in the denial of an application for a teacher certificate or for administrative and/or supervisory endorsement on a teaching certificate; revocation of suspension of a certificate; imposition of an administrative fine of up to $2,000 for each offense; placing the teacher, administrator, or supervisor on probation; restricting the teachers' scope of practice; or in the placing of a written reprimand in in the certification file of a teacher, administrator, or supervisor.

The law also establishes an educational standards commission to recommend to the state board of education standards for the development, certification, improvement, and maintenance of competence of educational personnel.

Amendments to Hawaii Act

Hawaii amended its collective bargaining law by expanding the definition of "strike" to include sympathy strikes by public employees in support of other groups of striking public employees. The law also prohibits "essential employees" from striking. Under the law, an "essential employee" is one who is designated by a public employer to fill an "essential position." An "essential position" is defined by the new law as that designated necessary by the public employment relations board to avoid an imminent or present danger to public health or safety.

The new law also empowers public employers to petition the PERB to make an investigation of a strike or threat of a strike. Upon a finding of a present danger of a strike to public health or safety, the PERB is directed to designate essential employees, establish requirements to resolve the danger, and require the essential employees to contact their public employer for work assignments. The law grants the power to an affected public employer to petition a state circuit court for relief where the violations of the strike provisions are confirmed by the PERB. The new amendment prohibits jury trial for these violations.

Kansas Teacher Negotiations Law

New amendments to the Kansas professional negotiations law expand the number of items teacher associations may negotiate with their local school board, including supplemental contracts covering extracurricular activities, employee grievances, extended and sabbatical leaves, probationary periods, evaluation procedures, dues checkoff, use of school facilities for association meetings, use of school mail service, and reasonable leaves for organizing activities. The law, as revised, now includes impasse resolution procedures providing for mediation and factfinding. The new revisions eliminate provisions of the negotiations law requiring fact finders to choose between the "last best offer" by the school or the association on disputed issues, and recommend adoption of one position or the other. Instead, the new law allows fact finders to recommend an independent position on each of the issues at impasse.

Another change in the law shortens the period for negotiating a new contract to two months. The deadline for serving notice to negotiate new items or amend an existing contract is changed from December 1 to February 1 of each year. The new law also provides that if agreement on a new contract is not reached by June 1, an impasse is automatically declared, and the machinery to resolve differences is triggered into effect without the need to go to court for a declaration of an impasse. The responsibility for a determination and declaration of an impasse is transferred from the district courts to the secretary of human resources—whose agency uses the professional negotiators of the Public Employee Relations Board to deal with labor disputes. The authority to rule on alleged commissions of prohibited practices by either party also is transferred from the courts to the secretary for human resources.

Minnesota Act

Teachers in Minnesota have the right to strike in the absence of an agreement or arbitration award, as a result of an amendment to Minnesota's public employment relations act. The right to strike is granted 60 days (including 30 days after contract expiration) after mediation, if either party rejects arbitration or, if arbitration was not requested, after an additional 45 days, so long as a further 10 days notice was given and the contract had expired. Under provisions of the law amended in 1973, public employees could strike only if their employer either refused to submit a bargaining impasse to arbitration or refused to implement an arbitrator's award, and in teacher disputes, only school boards could decide whether arbitration could be used. Except for employees designated as "essential"—policemen, firemen, nurses providing direct care and correctional institution guards—the act expands the right to strike for all state, local and teaching employees.

The act, the outcome of an interim study by the Legislative Commission on Employee Relations, makes changes in both the bargaining law and civil service statutes. The name of the personnel department is changed to the Department of Employee Relations and two divisions are created; personnel and labor relations.

New Jersey Statutes

An amendment to the New Jersey employer-employee relations act established procedures for agency shop agreements between the representative of the majority of public employees in an appropriate unit and the public employer. Under this amendment, a representative of majority employees may negotiate the collection of representation fees in lieu of membership dues by payroll deduction from salaries or wages of all nonmember employees in the bargaining unit. Representation fees are equivalent to regular membership dues, initiation fees, and assessments charged by the representative union. Representation fees for nonmembers are reduced by the cost of benefits available only to regular members and may not exceed 85 percent of regular membership dues, fees, and assessments. Public employees paying representation fees may demand and receive a return of any part of the fee they have paid representing pro rata shares of expenditures by the representative union for partisan political or ideological activities or causes which are incidentally related to terms and conditions of employment or applied toward costs of any benefits available only to members of the representative union. Refunds of pro rata shares do not apply to lobbying costs incurred to foster policy goals in collective negotiations and contract administration or to secure advantages in wages and hours and conditions of employment, in addition to those secured through collective negotiations with the public employer. Negotiated agreements for payroll deduction of representation fees may be made only if membership in the majority representative is available on an equal basis to all employees in the unit and the majority representative has established and maintained a demand and return system for pro rata shares. Demand and return systems must provide that persons who pay representation fees may obtain review of the amount to be returned through full and fair proceedings.

The law also established a three member board, appointed by the governor, comprised of a public employer representative, a public employee organization representative, and an impartial public citizen who serves as chairman. The board hears and decides all issues in pro rata share challenges. Payment of representation fees is to be paid to the majority representative during the term of the collective negotiation agreement affecting nonmember employees. Representation fees may not be collected before the 30th day of an employees' employment in a position included in the appropriate unit and before the 10th day following reentry into the appropriate unit for employees who previously served in a position included in the appropriate unit and who continued their employment in an excluded position, and for individuals being reemployed in the unit from a reemployment list. Individuals employed on a 10-month basis or who are reappointed from year to year are considered to be in continuous employment.

Under the new amendment, public employers or public employee organizations may not discriminate between nonmembers who pay representation fees and members who pay regular membership dues.

Massachusetts Act

Recent amendment to an existing Massachusetts law allows state employees to teach part-time in state educational institutions on the condition that these employees do not have official responsibility for, or participate in, financial management of the educational institution.

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TABULATION

State Legislation Affecting Teachers and Labor Relations, 1979-1980

California

Ch. 184, L. 1980—Certified school employees; leaves of absence
Ch. 326, L. 1980—School employees: reorganization
Ch. 490, L. 1980—Certificated employees; credentials
Ch. 666, L. 1980—Public employees; composition of PERB
Ch. 816, L. 1980—Public school employer-employee relations; organizational security agreements.
Ch. 949, L. 1980—Public school employer-employee relations.
Ch. 1008, L. 1980—State employer-employee relations
Ch. 1121, L. 1980—School certificated employees; leaves of absence
Ch. 1175, L. 1980—Public education employer-employee relations; classified employees—salary deductions
Ch. 1186, L. 1980—School employees; dismissal procedures
Ch. 1265, L. 1980—Public education employer-employee relations; classified employees—salary deductions
Ch. 1265, L. 1980—Public educational employment; judicial review

Connecticut

P.A. 80-209, L. 1980—Prohibition of mehanical recording of negotiations between employees and employers
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